LAWS AND RESOLUTIONS OF THE STATE OF MONTANA

Enacted or Passed by the

SIXTY-SECOND LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government January 3, 2011, through April 28, 2011

Published and distributed by
Montana Legislative Services Division
Capitol Bldg Rm 110
1301 E 6th Ave
PO Box 201706
Helena MT 59620-1706
http://leg.mt.gov

Susan Byorth Fox
Executive Director

Indexing Services provided by
LexisNexis
Matthew Bender & Company, Inc.
701 East Water Street
Charlottesville VA 22902-5389

Printed and bound by
West, a Thomson Reuters business
610 Opperman Dr
Eagan MN 55123

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OFFICERS AND MEMBERS OF THE MONTANA SENATE

2011

50 Members

28 Republicans 22 Democrats

OFFICERS

President ..... Jim Peterson
President Pro Tempore ..... Bruce Tutvedt
Majority Leader ..... Jeff Essmann
Majority Whips ..... Taylor Brown, Chas Vincent
Minority Leader ..... Carol Williams
Minority Whip ..... Kim Gillan
Secretary of the Senate ..... Marilyn Miller
Sergeant at Arms ..... Nancy Clark

MEMBERS

Name	Party	District	Preferred Mailing Address
Arthun, Ron	R	31	285 Shields River Rd, Wilsall MT 59086-9446
Augare, Shannon	D	8	PO Box 909, Browning MT 59417-0909
Balyeat, Joe	R	34	6909 Rising Eagle Rd, Bozeman MT 59715-8621
Barrett, Debby	R	36	18580 MT Highway 324, Dillon MT 59725-8031
Blewett, Anders	D	11	PO Box 2807, Great Falls MT 59403-2807
Branae, Gary	D	27	415 Yellowstone Ave, Billings MT 59101-1730
Brenden, John	R	18	PO Box 970, Scobey MT 59263-0970
Brown, Taylor	R	22	775 Squaw Creek Rd, Huntley MT 59037-9219
Buttrey, Edward	R	13	27 Granite Hill Ln, Great Falls MT 59405-8041
Caferro, Mary	D	40	607 N Davis St, Helena MT 59601-3737
Erickson, Ron	D	47	3250 Pattee Canyon Rd, Missoula MT 59803-1703
Essmann, Jeff	R	28	PO Box 80945, Billings MT 59108-0945
Facey, Tom	D	48	418 Plymouth St, Missoula MT 59801-4133
Gallus, Steve	D	37	2319 Harvard Ave, Butte MT 59701-3854
Gillan, Kim	D	24	750 Judicial Ave, Billings MT 59105-2130
Hamlett, Bradley Maxon	D	10	PO Box 49, Cascade MT 59421-0049
Hawks, Bob	D	33	703 W Koch St, Bozeman MT 59715-4477
Hinkle, Greg	R	7	5 Gable Rd, Thompson Falls MT 59873-8512
Hutton, Rowlie	R	17	2 Lila Dr, Havre MT 59501-5245
Jackson, Verdell	R	5	555 Wagner Ln, Kalispell MT 59901-8079
Jent, Larry	D	32	1201 S 3rd St, Bozeman MT 59715-5503
Jones, Llew	R	14	1102 4th Ave SW, Conrad MT 59425-1919
Kaufmann, Christine	D	41	825 Breckenridge St, Helena MT 59601-4433
Keane, Jim	D	38	2131 Wall St, Butte MT 59701-5527
Lake, Bob	R	44	PO Box 2096, Hamilton MT 59840-2096
Larsen, Cliff	D	50	8925 Lavalle Creek Rd, Missoula MT 59808-9324
Lewis, Dave	R	42	5871 Collins Rd, Helena MT 59602-9584
Moore, Frederick (Eric)	R	20	487 Signal Butte Rd, Miles City MT 59301-9205
Moss, Lynda	D	26	552 Highland Park Dr, Billings MT 59102-1046
Mowbray, Carmine	R	6	PO Box 1202, Polson MT 59860-1202
Murphy, Terry	R	39	893 Boulder Cutoff Rd, Cardwell MT 59721-9605
Olson, Alan	R	23	18 Halfbreed Creek Rd, Roundup MT 59072-6524
Peterson, Jim	R	15	1250 Buffalo Canyon Rd, Buffalo MT 59418-8001
Priest, Jason	R	30	PO Box 743, Red Lodge MT 59068-0743
Ripley, Rick	R	9	8920 MT Highway 200, Wolf Creek MT 59648-8639
Shockley, Jim	R	45	PO Box 608, Victor MT 59875-0608
Sonju, Jon	R	4	PO Box 2954, Kalispell MT 59903-2954
Steinbeisser, Donald	R	19	11918 County Rd 348, Sidney MT 59270-9620
Stewart-Peregoy, Sharon	D	21	PO Box 211, Crow Agency MT 59022-0211

Tropila, Mitch	D	12	PO Box 929, Great Falls MT 59403-0929
Tutvedt, Bruce	R	3	2335 W Valley Dr, Kalispell MT 59901-6958
Van Dyk, Kendall	D	25	PO Box 441, Billings MT 59103-0441
Vincent, Chas	R	1	34 Paul Bunyan Ln, Libby MT 59923-7990
Vuckovich, Gene	D	43	1205 W 3rd St, Anaconda MT 59711-1801
Walker, Edward	R	29	4221 Rimrock Rd, Billings MT 59106-1420
Wanzenried, David	D	49	903 Sky Dr, Missoula MT 59804-3121
Williams, Carol	D	46	3533 Lincoln Hills Pt, Missoula MT 59802-3381
Windy Boy, Jonathan	D	16	PO Box 269, Box Elder MT 59521-0269
Wittich, Art	R	35	3116 Sourdough Rd, Bozeman MT 59715-9260
Zinke, Ryan	R	2	409 W 2nd St, Whitefish MT 59937-3010

OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES

2011

100 Members

68 Republicans 32 Democrats

OFFICERS

Speaker .....Mike Milburn
Speaker Pro Tempore .....Janna Taylor
Majority Leader .....Tom McGillvray
Majority Whips .....Jerry Bennett, Keith Regier, Cary Smith, Wendy Warburton
Minority Leader .....Jon Sesso
Minority Caucus Leader .....Betsy Hands
Minority Whips .....Chuck Hunter, Margaret MacDonald
Chief Clerk of the House.....Beth Cargo
Sergeant at Arms.....Russell Bean

MEMBERS

Name	Party	District	Preferred Mailing Address
Ankney, Duane	R	43	PO Box 2138, Colstrip MT 59323-2138
Arntzen, Elsie	R	53	2323 Azalea Ln, Billings MT 59102-2516
Bangerter, Liz	R	80	3419 Blackhawk St, Helena MT 59602-0550
Barrett, Dick	D	93	219 Agnes Ave, Missoula MT 59801-8730
Beck, Bill	R	6	PO Box 2049, Whitefish MT 59937-2049
Belcourt, Tony	D	32	PO Box 192, Box Elder MT 59521-0192
Bennett, Bryce	D	92	430 S 5th St E Apt C9, Missoula MT 59801-2855
Bennett, Jerry	R	1	784 Taylor Rd, Libby MT 59923-8458
Berry, Tom	R	45	PO Box 157, Roundup MT 59072-0157
Blasdel, Mark	R	10	PO Box 291, Somers MT 59932-0291
Blyton, Joanne	R	59	6 Gray Ln, Joliet MT 59041-9594
Boland, Cydnie (Carlie)	D	23	1215 6th Ave N, Great Falls MT 59401-1601
Brodehl, Randy	R	7	16 White Bark, Kalispell MT 59901-2122
Burnett, Tom	R	63	4143 Rain Roper Dr, Bozeman MT 59715-0634
Clark, Christy	R	17	PO Box 423, Choteau MT 59422-0423
Connell, Pat	R	87	567 Tiffany Ln, Hamilton MT 59840-9241
Cook, Rob	R	27	223 1st Ave SW, Conrad MT 59425-1805
Court, Virginia	D	52	18 Heatherwood Ln, Billings MT 59102-2449
Cuffe, Mike	R	2	PO Box 1685, Eureka MT 59917-1685
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Edmunds, Champ	R	100	PO Box 17612, Missoula MT 59808-7612
Ehli, Ron	R	88	PO Box 765, Hamilton MT 59840-0765
Esp, John	R	61	PO Box 1024, Big Timber MT 59011-1024
Evans, Lila	R	16	PO Box 302, Browning MT 59417-0302
Fitzpatrick, Steve	R	20	3203 15th Ave S, Great Falls MT 59405-5416
Flynn, Kelly	R	68	PO Box 233, Townsend MT 59644-0233
Furey, Timothy	D	91	PO Box 56, Milltown MT 59851-0056
Gibson, Steve	R	78	2665 Stagecoach Dr, East Helena MT 59635-3434
Greef, Edward	R	90	PO Box 1327, Florence MT 59833-1327
Hale, Alan	R	77	PO Box 70, Basin MT 59631-0070
Hands, Betsy	D	99	216 South Ave W, Missoula MT 59801-8114
Hansen, Kristin	R	33	Havre MT 59501
Harris, Bill	R	30	2009 Old Stage Rd, Mosby MT 59058-9604
Hendrick, Gordon	R	14	PO Box 262, Superior MT 59872-0262
Hill, Ellie Boldman	D	94	131 S Higgins Ave Apt 6-1, Missoula MT 59802-4439
Hiner, Cynthia	D	85	1027 Kentucky St, Deer Lodge MT 59722-2041

Hollandsworth, Roy	R	28	1463 Prairie Dr, Brady MT 59416-8928
Hollenbaugh, Galen	D	81	PO Box 902, Helena MT 59624-0902
Hoven, Brian	R	24	1501 Meadowlark Dr, Great Falls MT 59404-3325
Howard, David	R	60	PO Box 129, Park City MT 59063-0129
Hunter, Chuck	D	79	717 Dearborn Ave, Helena MT 59601-2712
Ingraham, Pat	R	13	PO Box 1151, Thompson Falls MT 59873-1151
Kary, Douglas	R	48	415 W Wicks Ln, Billings MT 59105-3457
Kennedy, Dan	R	57	PO Box 1216, Laurel MT 59044-1216
Kerns, Krayton	R	58	1408 Golf Course Rd, Laurel MT 59044-3600
Klock, Harry	R	83	PO Box 308, Harlowton MT 59036-0308
Knox, James	R	47	661 Garnet Ave, Billings MT 59105-3003
Knudsen, Austin	R	36	PO Box 624, Culbertson MT 59218-0624
Lavin, Steve	R	8	PO Box 11241, Kalispell MT 59904-4241
Loney, Cleve	R	25	93 Brandy Wine Ln, Great Falls MT 59404-6118
MacDonald, Margaret	D	54	4111 June Dr, Billings MT 59106-1565
MacLaren, Gary	R	89	429 Curlew Orchard Rd, Victor MT 59875-9519
Malek, Sue	D	98	1400 Prairie Way, Missoula MT 59802-3420
McChesney, Bill	D	40	316 Missouri Ave, Miles City MT 59301-4140
McClafferty, Edith (Edie)	D	75	1311 Stuart Ave, Butte MT 59701-5014
McGillvray, Tom	R	50	3642 Donna Dr, Billings MT 59102-1119
McNally, Mary	D	49	PO Box 20584, Billings MT 59104-0584
McNiven, Jonathan	R	44	3445 Rock Pillar Rd, Huntley MT 59037-9237
McNutt, Walter	R	37	110 12th Ave SW, Sidney MT 59270-3614
Mehlhoff, Robert	D	26	407 9th St NW, Great Falls MT 59404-2333
Menahan, Mike	D	82	40 Olive St, Helena MT 59601-6285
Milburn, Mike	R	19	276 Chestnut Valley Rd, Cascade MT 59421-8204
Miller, Mike	R	84	20906 MT Highway 141, Helmville MT 59843-9025
More, Michael	R	70	450 N Low Bench Rd, Gallatin Gateway MT 59730-8546
Noonan, Pat	D	73	PO Box 90, Ramsay MT 59748-0090
O'Hara, Jesse	R	18	2221 Holly Ct, Great Falls MT 59404-3562
O'Neil, Jerry	R	3	985 Walsh Rd, Columbia Falls MT 59912-9044
Osmundson, Ryan	R	29	2288 U Bet Rd, Buffalo MT 59418-8101
Pease-Lopez, Carolyn	D	42	5723 US Highway 87 E, Billings MT 59101-9074
Peterson, Ken	R	46	424 48th St W, Billings MT 59106-2306
Phillips, Mike	D	66	9 W Arnold St, Bozeman MT 59715-6127
Price, Jean	D	21	422 15th St S, Great Falls MT 59405-2424
Randall, Lee	R	39	101 Randall Ln, Broadus MT 59317-9519
Read, Joe	R	15	35566 Terrace Lake Rd, Ronan MT 59864-2435
Regier, Keith	R	5	1078 Stillwater Rd, Kalispell MT 59901-6902
Reichner, Scott	R	9	78 Redtail Rdg, Bigfork MT 59911-6283
Reinhart, Michele	D	97	PO Box 5945, Missoula MT 59806-5945
Roberts, Don	R	56	5414 Walter Hagen Dr, Billings MT 59106-1007
Rosendale, Matthew	R	38	1954 Highway 16, Glendive MT 59330-9218
Salomon, Daniel	R	12	42470 Salomon Rd, Ronan MT 59864-9272
Sands, Diane	D	95	4487 Nicole Ct, Missoula MT 59803-2791
Schmidt, Trudi	D	22	4029 6th Ave S, Great Falls MT 59405-3746
Sesso, Jon	D	76	811 W Galena St, Butte MT 59701-1540
Skattum, Dan	R	62	2148 E River Rd, Livingston MT 59047-9126
Skees, Derek	R	4	PO Box 5331, Whitefish MT 59937-5331
Small, Sterling	R	41	HC 42 Box 667, Busby MT 59016-9709
Smith, Cary	R	55	5522 Billy Casper Dr, Billings MT 59106-1029
Smith, Frank	D	31	PO Box 729, Poplar MT 59255-0729
Squires, Carolyn	D	96	2111 S 10th St W, Missoula MT 59801-3412
Stahl, Wayne	R	35	PO Box 345, Saco MT 59261-0345
Swanson, Kathy	D	86	308 E 6th St, Anaconda MT 59711-3016
Taylor, Janna	R	11	PO Box 233, Dayton MT 59914-0233
Vance, Gordon	R	67	305 Stillwater Ave, Bozeman MT 59718-1917
Wagner, Bob	R	71	PO Box 191, Harrison MT 59735-0191
Warburton, Wendy	R	34	Havre MT 59501
Washburn, Ted	R	69	612 Candlelight Dr, Bozeman MT 59718-7255
Welborn, Jeffrey	R	72	245 Clarks Lookout Rd, Dillon MT 59725-8234
Williams, Kathleen	D	65	PO Box 548, Bozeman MT 59771-0548
Wilmer, Franke	D	64	541 E Mendenhall St, Bozeman MT 59715-3728
Yates, Max	R	74	PO Box 3685, Butte MT 59702-3685

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28 *(House Bill No. 17; Hollandsworth)* RELATING TO THE RELATIONSHIP OF STATE AGENCY LIQUOR STORES WITH OTHER LIQUOR LICENSEES; CORRECTING TERMINOLOGY DESCRIBING STATE AGENCY LIQUOR STORES; AMENDING SECTION 16-2-203, MCA; AND PROVIDING AN APPLICABILITY DATE 141

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31 *(House Bill No. 96; Menahan)* ALLOWING THE OFFICE OF STATE PUBLIC DEFENDER TO RECOVER ITS COSTS OF REPRESENTATION FROM A RESPONDENT IN CERTAIN CASES; AND AMENDING SECTION 47-1-110, MCA 153

32 *(House Bill No. 114; O'Hara)* AMENDING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COVERAGE FOR MENTAL HEALTH COUNSELING EXPENSES FOR MINOR CHILDREN PRESENT IN HOMES WHERE DOMESTIC VIOLENCE HAS OCCURRED; AND AMENDING SECTIONS 53-9-103, 53-9-123, AND 53-9-128, MCA 154

33 *(House Bill No. 156; Smith)* INCREASING THE ALLOWANCE TO BE PAID BY THE COUNTY OF RESIDENCE FOR THE INTERMENT AND THE SHIPPING AND RAISING OF A HEADSTONE FOR A VETERAN;

AMENDING SECTION 10-2-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 157

34 *(House Bill No. 210; McChesney)* ALLOWING FOR THE ISSUANCE OF A TERM PERMIT FOR AN OVERLENGTH OR OVERWIDTH VEHICLE MOVING A MOBILE HOME OR A MANUFACTURED HOME IF THE VEHICLE DOES NOT EXCEED 110 FEET IN LENGTH OR 16 FEET IN WIDTH; AND AMENDING SECTION 61-10-124, MCA 159

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36 *(House Bill No. 359; Vance)* REVISING WORKERS' COMPENSATION LAW PERTAINING TO SETTLEMENTS AND LUMP-SUM PAYMENTS; AMENDING SECTIONS 39-71-703, 39-71-721, AND 39-71-741, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 164

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38 *(Senate Bill No. 41; Shockley)* ALLOWING A CITY TO ESTABLISH A CITY COURT OF RECORD; PROVIDING THAT APPEALS FROM A CITY COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AMENDING SECTIONS 3-1-102, 3-11-101, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE 169

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76 *(Senate Bill No. 19; Shockley)* PROVIDING FOR THE FILING OF AN AFFIDAVIT OF DEATH FOR THE PURPOSES OF NONPROBATE TRANSFERS OF REAL PROPERTY; AND AMENDING SECTION 72-6-121, MCA 285

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81 *(Senate Bill No. 289; Zinke)* INCREASING THE AMOUNT OF LIQUOR DISTILLED AT A MICRODISTILLERY THAT MAY BE SOLD TO A CUSTOMER FOR OFF-PREMISES CONSUMPTION; AND AMENDING SECTION 16-4-312, MCA 297

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97 *(Senate Bill No. 128; Lake)* EXEMPTING FROM PERMITTING GROUND WATER APPROPRIATIONS BY LOCAL GOVERNMENTAL FIRE AGENCIES FOR FIRE PROTECTION USE; AND AMENDING SECTION 85-2-306, MCA 324

98 *(Senate Bill No. 342; Buttrey)* DEFINING "MISCONDUCT" WITH RESPECT TO UNEMPLOYMENT INSURANCE BENEFITS; AND AMENDING SECTION 39-51-201, MCA 326

99 *(House Bill No. 70; Menahan)* GENERALLY REVISING THE LAWS RELATING TO THE PUBLIC RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; PERMITTING THE BOARD TO APPOINT ITS OWN ATTORNEY TO REVIEW PROPOSED BOARD RULES; CLARIFYING DEFINITIONS REGARDING TERMINATION OF SERVICE TO SPECIFY THAT A MEMBER WITH AN AGREEMENT TO RETURN TO WORK IS NOT ELIGIBLE TO RETIRE; CLARIFYING LIABILITY FOR INCORRECT REPORTING OR ERRONEOUS PAYMENTS; CLARIFYING THE EFFECT OF OLD MEMBERSHIP CARDS ON RETURNING MEMBERS; CLARIFYING THAT A SERVICE PURCHASE MUST STOP OR BE COMPLETED PRIOR TO PAYMENT OF A DISABILITY BENEFIT; CLARIFYING THAT GUARANTEED ANNUAL BENEFIT ADJUSTMENT PAYMENTS ARE NOT PAID RETROACTIVELY; ADDRESSING BANKED HOLIDAY PAYMENTS; TREATING THE MONTANA SCHOOL FOR THE DEAF AND BLIND AS A SCHOOL DISTRICT FOR CALCULATION OF MEMBERSHIP SERVICE DURING OFFICIAL VACATION; CLARIFYING THE TREATMENT OF ADDITIONAL OR ONE-FOR-FIVE SERVICE PURCHASES; PROVIDING THAT RETIRED MEMBERS MUST BE TERMINATED FROM EMPLOYMENT FOR AT LEAST 90 DAYS PRIOR TO RETURNING TO SERVICE AS A WORKING RETIREE; CLARIFYING THE DEATH BENEFIT AVAILABLE TO A BENEFICIARY OF A MEMBER WHO WAS INACTIVE FOR LESS THAN 6 MONTHS AT THE TIME OF DEATH; CLARIFYING PAYMENT OF THE REMAINING OPTION 4 BENEFIT WHEN THE RETIREE AND ALL NAMED CONTINGENT ANNUITANTS DIE PRIOR TO THE END OF THE PERIOD CERTAIN; REDUCING THE ASSUMED RATE OF INTEREST; CLARIFYING THE BENEFIT AVAILABLE TO GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM MEMBERS; ELIMINATING THE AD HOC BENEFIT INCREASE USED FOR PURCHASING POWER ADJUSTMENTS; AMENDING SECTIONS 2-4-110, 2-15-1009, 17-6-203, 19-2-303, 19-2-403, 19-2-506, 19-2-603, 19-2-706, 19-2-715, 19-2-801, 19-2-802, 19-2-908, 19-3-108, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-513, 19-3-901, 19-3-906, 19-3-1106, 19-3-1201, 19-3-1202, 19-3-1203, 19-3-1501, 19-3-2114, 19-3-2117, 19-5-701, 19-7-301, 19-7-302, 19-7-1001, 19-8-101, 19-8-601, 19-8-801, 19-8-1003, 19-13-301, AND 19-21-214, MCA; REPEALING SECTIONS 19-3-1606 AND 19-8-604, MCA; AND PROVIDING AN EFFECTIVE DATE 330

100 *(House Bill No. 94; Arntzen)* GENERALLY REVISING PROFESSIONS AND OCCUPATIONS LAW; REVISING LICENSE VERIFICATION REQUIREMENTS FOR OUT-OF-STATE APPLICANTS; PROVIDING THAT A SCREENING PANEL IS AN AGENCY FOR THE PURPOSE OF SUMMARY SUSPENSIONS; REVISING DEFINITIONS AND THE ADMINISTRATION OF ANESTHESIA PERTAINING TO DENTISTRY; ELIMINATING THE REFERENCE TO A STATE EXAMINATION WITH RESPECT TO PODIATRISTS; REVISING BARBER AND COSMETOLOGIST LAW REGARDING BOOTH RENTAL, INSTRUCTOR

TRAINING, AND LICENSING; EXPANDING THE AUTHORITY OF THE BOARD OF OUTFITTERS TO APPROVE LICENSE SUCCESSORS; REVISING DUTIES OF THE BOARD OF OUTFITTERS AND ELIMINATING RESTRICTIONS ON THE BOARD'S HIRING OF INVESTIGATORS; REVISING REALTY LAWS PERTAINING TO EDUCATION AND LICENSING REQUIREMENTS; REVISING PRIVATE SECURITY LAW DEFINITIONS AND RULEMAKING; AMENDING PROFESSIONAL ENGINEERING AND LAND SURVEYOR LAWS WITH RESPECT TO OUT-OF-STATE APPLICANTS; EXPANDING RECIPROCITY WITH RESPECT TO CRANE OPERATORS; REPEALING THE REQUIREMENT THAT PHARMACIES POST CERTAIN PRESCRIPTION DRUG PRICES; AMENDING SECTIONS 37-1-304, 37-1-305, 37-1-307, 37-3-310, 37-4-101, 37-4-511, 37-6-302, 37-31-305, 37-31-309, 37-31-312, 37-47-202, 37-47-310, 37-47-351, 37-51-204, 37-51-308, 37-51-605, 37-60-101, 37-60-202, 37-60-303, 37-67-306, 37-67-312, 37-67-313, AND 50-76-113, MCA; AND REPEALING SECTION 37-7-204, MCA 364

101 *(House Bill No. 99; Ingraham)* GENERALLY REVISING LAWS RELATING TO ABSENTEE BALLOTS AND MAIL BALLOTS; CLARIFYING PROCEDURES FOR AN ELECTOR TO VOTE ABSENTEE; CLARIFYING PROVISIONS RELATED TO REPLACEMENT BALLOTS; CLARIFYING PROCEDURES FOR RESOLVING PROBLEMS WITH RETURN ENVELOPE SIGNATURES; PROVIDING AN ELECTOR WITH NOTICE AND OPPORTUNITY TO RESOLVE QUESTIONS ABOUT OR PROBLEMS WITH THE ELECTOR'S SIGNATURE ON A RETURN ENVELOPE; CLARIFYING STATUTES RELATED TO VALID AND INVALID BALLOTS; REVISING BALLOT COUNTING PROCEDURES; AMENDING SECTIONS 13-13-201, 13-13-204, 13-13-212, 13-13-213, 13-13-222, 13-13-241, 13-15-201, 13-19-102, 13-19-106, 13-19-205, 13-19-206, 13-19-207, 13-19-301, 13-19-303, 13-19-305, 13-19-306, 13-19-308, 13-19-309, 13-19-312, AND 13-19-313, MCA; REPEALING SECTIONS 13-19-310 AND 13-19-311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 379

102 *(House Bill No. 141; Peterson)* GENERALLY REVISING THE MAKEUP, OPERATION, AND PROCEDURES OF THE BOARD OF PARDONS AND PAROLE; AMENDING SECTIONS 2-15-2302, 46-23-103, 46-23-104, 46-23-109, 46-23-201, 46-23-202, 46-23-210, 46-23-215, 46-23-218, 46-23-301, 46-23-302, 46-23-306, 46-23-307, AND 46-23-1025, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 391

103 *(House Bill No. 254; Vance)* REVISING MOTOR CLUB SERVICE LAWS; EXEMPTING CERTAIN AGENTS AND COMPANIES FROM CERTAIN LICENSING REQUIREMENTS; AMENDING SECTION 61-12-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 398

104 *(House Bill No. 259; Loney)* REQUIRING THE DRIVER OF A VEHICLE ON A HIGHWAY THAT INTERSECTS ANOTHER HIGHWAY WITHOUT CROSSING IT TO YIELD THE RIGHT-OF-WAY; AND AMENDING SECTION 61-8-339, MCA 399

105 *(House Bill No. 270; Lavin)* ESTABLISHING THE HIGHWAY PATROL OFFICER MICHAEL W. HAYNES MEMORIAL HIGHWAY; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 399

106 *(House Bill No. 273; Mehlhoff)* ALLOWING FOR THE OPERATION OF OFF-HIGHWAY VEHICLES ON CERTAIN PUBLIC ROADS WHEN

AUTHORIZED BY A LOCAL GOVERNMENT OR THE STATE HIGHWAY PATROL 400

107 *(House Bill No. 293; Connell)* PROVIDING THAT THE PROPERTY TAX EXEMPTION FOR VETERANS' ORGANIZATIONS EXTENDS TO LAND OWNED BY THE ORGANIZATION CONTINUOUSLY SINCE 1960; AMENDING SECTION 15-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 401

108 *(House Bill No. 348; Malek)* PROVIDING AN ALTERNATE SOURCE FOR AN OUTDATED REFERENCE TO INTEREST RATES BASED ON THE PRIME RATE; AMENDING SECTIONS 7-8-2304, 31-1-107, AND 33-3-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE AND APPLICABILITY DATE 401

109 *(House Bill No. 374; Hansen)* REVISING LAWS RELATING TO POWERS OF ATTORNEY; ADOPTING THE UNIFORM POWER OF ATTORNEY ACT TO REPLACE THE STATUTORY FORM POWER OF ATTORNEY ACT; PROVIDING CAUSES OF ACTION AND PENALTIES FOR THE INTENTIONAL DISSIPATION OF AN ESTATE THROUGH THE USE OF A POWER OF ATTORNEY; AMENDING SECTIONS 72-3-917, 72-5-501, 72-5-502, 72-31-222, 72-31-223, 72-31-224, 72-31-225, 72-31-226, 72-31-227, 72-31-228, 72-31-229, 72-31-230, 72-31-231, 72-31-232, 72-31-233, 72-31-234, 72-31-235, 72-31-236, AND 72-31-238, MCA; AND REPEALING SECTIONS 72-31-201 AND 72-31-237, MCA 403

110 *(House Bill No. 428; Berry)* REVISING BUSINESS FILING WITH THE SECRETARY OF STATE; ALLOWING A PERSON DOING BUSINESS IN MONTANA TO CONTEST THE REGISTRATION OF AN ASSUMED BUSINESS NAME; MODIFYING THE EXISTING CONTEST OF REGISTRATION OF NAME PROCESS; ALLOWING THE SECRETARY OF STATE TO ASSESS CERTAIN FEES AND COSTS TO THE LOSING PARTY WHEN AN ASSUMED BUSINESS NAME IS CONTESTED; PROVIDING A PENALTY; AMENDING SECTIONS 30-13-202 AND 35-1-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 430

111 *(House Bill No. 484; Squires)* CLARIFYING THAT THE PROVISION OF ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS IS BASED ON ANNUAL VERIFICATION OF ADDRESSES AND IS NOT PERMANENT; AMENDING SECTIONS 13-13-212 AND 13-21-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 432

112 *(House Bill No. 497; Clark)* REMOVING THE PROHIBITION ON PERMITS TO APPROPRIATE AND CONSUME MORE THAN 4,000 ACRE-FEET OF WATER ANNUALLY; AND AMENDING SECTION 85-2-301, MCA 434

113 *(House Bill No. 536; Flynn)* REPEALING THE REQUIREMENT THAT A GRIZZLY BEAR OR THE PARTS OF A GRIZZLY BEAR BE REGISTERED WITH THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS BEFORE THEY MAY BE SOLD IN ACCORDANCE WITH FEDERAL LAW; AMENDING SECTIONS 87-3-111 AND 87-3-118, MCA; REPEALING SECTION 87-3-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 434

114 *(House Bill No. 573; Hunter)* INCLUDING WITHIN THE INSURANCE COMMISSIONER'S DUTIES A REQUIREMENT TO STUDY CREATION OF A STATEWIDE ALL-PAYER, ALL-CLAIMS DATABASE FOR HEALTH CARE; REQUIRING USE OF AN ADVISORY COUNCIL; ESTABLISHING REPORTING REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 437

115 *(Senate Bill No. 7; Keane)* REQUIRING ELECTRICAL GENERATION FACILITIES AND UTILITIES IN MONTANA THAT BUY OR SELL RENEWABLE ENERGY CREDITS TO FILE RENEWABLE ENERGY CREDIT REPORTS WITH THE DEPARTMENT OF REVENUE AND THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO REVIEW THE REPORT; PROVIDING EXCEPTIONS TO THE REPORTS' CONTENTS; PROVIDING A PENALTY FOR NOT FILING A RENEWABLE ENERGY CREDIT REPORT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 438

116 *(Senate Bill No. 12; Erickson)* REPEALING AN OBSOLETE BUSINESS EQUIPMENT PROPERTY TAX REIMBURSEMENT TO LOCAL GOVERNMENT TAXING JURISDICTIONS; REPEALING SECTION 15-1-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 440

117 *(Senate Bill No. 49; Branae)* REVISING THE SIZE OF TRAILER LICENSE PLATES; ESTABLISHING THE SIZE OF MOTORCYCLE AND QUADRICYCLE LICENSE PLATES; DESIGNATING SMALL LICENSE PLATES AS THE DEFAULT SIZE FOR A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS; ALLOWING A PERSON REGISTERING A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS TO CHOOSE LARGE LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 440

118 *(Senate Bill No. 92; Jent)* ALLOWING NONRESIDENTS TO CAPTURE RAPTORS FOR FALCONRY OR CAPTIVE BREEDING PURPOSES; AND AMENDING SECTION 87-5-208, MCA. 444

119 *(Senate Bill No. 189; Keane)* ALLOWING PHARMACISTS TO ADMINISTER THE INFLUENZA VACCINE TO INDIVIDUALS WHO ARE 12 YEARS OF AGE OR OLDER; AND AMENDING SECTION 37-7-101, MCA 444

120 *(Senate Bill No. 205; Olson)* PROHIBITING A UTILITY FROM PROVIDING ELECTRICITY SUPPLY SERVICE IN ANOTHER UTILITY'S SERVICE TERRITORY; AMENDING SECTIONS 69-5-102 AND 69-8-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 448

121 *(Senate Bill No. 361; Ripley)* GENERALLY REVISING GAMBLING LAWS; ALLOWING VIDEO LINE GAMES IN LICENSED ESTABLISHMENTS; PROVIDING CONDITIONS FOR OPERATION OF VIDEO LINE GAMES; PROHIBITING ADVERTISING OR PROMOTION OF GAMES NOT SPECIFICALLY AUTHORIZED; PROHIBITING MANUFACTURERS FROM CHARGING CERTAIN GAME FEES ON A DAILY OR PERIODIC BASIS; AMENDING SECTIONS 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-611, AND 23-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 450

122 *(House Bill No. 25; Roberts)* EXPANDING AND REVISING LAWS RELATED TO CERTAIN LICENSING BOARDS' MEDICAL ASSISTANCE PROGRAMS; REQUIRING PERIODIC AUDITS OF THE PROGRAMS; APPLYING CONFIDENTIALITY PROVISIONS TO THE PROGRAMS; REQUIRING BOARD ACTION ON CERTAIN PROGRAM VIOLATIONS; REQUIRING MEDICAL ASSISTANCE PROGRAMS FOR THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF PHARMACY; AMENDING SECTIONS 37-1-131, 37-3-203, 37-3-401, 37-4-311, 37-7-201, AND 37-8-202, MCA; AND REPEALING SECTION 37-3-208, MCA 454

123 *(House Bill No. 80; Arntzen)* GENERALLY REVISING LAWS RELATED TO UNEMPLOYMENT INSURANCE; CLARIFYING THAT EXCLUSION FROM WAGES FOR CERTAIN SELF-EMPLOYED WORKERS AND OWNERS DO NOT APPLY TO SIMILAR WAGES FOR CERTAIN TAX CREDIT PURPOSES; REVISING THE EXCLUSION FROM WAGES FOR CERTAIN SELF-EMPLOYED WORKERS AND OWNERS; REMOVING SERVICES PERFORMED BY SOLE PROPRIETORS, CERTAIN PARTNERS, PARTNERS IN CERTAIN LIMITED LIABILITY PARTNERSHIPS, AND MEMBERS OF CERTAIN LIMITED LIABILITY COMPANIES AS AN EXEMPTION FROM THE DEFINITION OF "EMPLOYMENT"; REMOVING SERVICES PERFORMED BY VOLUNTEERS IN CERTAIN FEDERAL PROGRAMS AS AN EXEMPTION FROM THE DEFINITION OF "EMPLOYMENT"; CLARIFYING SUBPOENA POWER AND ENFORCEMENT OPTIONS FOR THE DEPARTMENT OF LABOR AND INDUSTRY; ALLOWING INTERCEPTION OF LOTTERY WINNINGS TO OFFSET OVERPAYMENT OF UNEMPLOYMENT BENEFITS; CLARIFYING REFERENCES TO EMPLOYERS WITH EXPERIENCE RATING; AND AMENDING SECTIONS 15-31-150, 39-51-201, 39-51-204, 39-51-301, 39-51-1212, 39-51-1214, 39-51-2101, 39-51-2111, 39-51-2302, 39-51-3206, 53-20-221, AND 53-20-222, MCA 461

124 *(House Bill No. 82; Sands)* REQUIRING THE BOARD OF MEDICAL EXAMINERS TO PROVIDE AN ANNUAL REPORT ON THE NUMBER AND TYPES OF COMPLAINTS INVOLVING PHYSICIAN PRACTICES IN PROVIDING WRITTEN CERTIFICATION FOR THE MEDICAL USE OF MARIJUANA; AMENDING SECTIONS 37-3-203, 50-46-103, AND 50-46-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 476

125 *(House Bill No. 117; Hunter)* REQUIRING CERTAIN ADULT OFFENDERS SUBJECT TO SUPERVISION BY THE DEPARTMENT OF CORRECTIONS PURSUANT TO THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION TO PROVIDE A BIOLOGICAL SAMPLE FOR DNA TESTING; AMENDING SECTION 44-6-103, MCA; AND PROVIDING AN APPLICABILITY DATE 480

126 *(House Bill No. 142; Sands)* REVISING LAWS RELATING TO LEGISLATIVE INTERIM COMMITTEES AND REPORTS TO THE LEGISLATURE; REQUIRING INTERIM COMMITTEES TO REVIEW STATUTORILY ESTABLISHED ADVISORY COUNCILS AND REQUIRED REPORTS OF THEIR ASSIGNED AGENCIES TO MAKE RECOMMENDATIONS REGARDING RETENTION OR ELIMINATION; REVISING REQUIREMENTS RELATING TO REPORTS TO THE LEGISLATURE; AND AMENDING SECTIONS 5-5-215 AND 5-11-210, MCA. 480

127 *(House Bill No. 171; Ingraham)* REVISING LAWS RELATED TO LICENSE PLATE SIZES; DESIGNATING SMALL LICENSE PLATES AS THE DEFAULT SIZE FOR A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS; ALLOWING A PERSON REGISTERING A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS TO CHOOSE LARGE LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . . 483

128 *(House Bill No. 212; Ingraham)* ELIMINATING COUNTY CLASSIFICATIONS; REPLACING REFERENCES TO COUNTY CLASSIFICATIONS WITH AMOUNT OF TAXABLE VALUATION OR POPULATION; AMENDING SECTIONS 2-18-641, 2-18-702, 7-2-2213, 7-2-2218, 7-2-2222, 7-2-2225, 7-3-1214, 7-3-1306, 7-3-1341, 7-4-2405, 7-4-2601, 7-4-2602, 7-4-2703, 7-4-2705, 7-4-3006, 7-6-2102, 7-6-2401, 7-6-2413, 7-21-3211, 7-22-2142, 7-32-101, 7-32-2102, 7-32-2111, 13-17-101,

15-23-703, 15-24-3001, 15-36-332, 15-39-110, 30-14-122, 39-4-107, 80-7-814, AND 90-6-1001, MCA; REPEALING SECTIONS 7-1-2111 AND 7-1-2112, MCA; AND PROVIDING AN EFFECTIVE DATE. 486

129 *(House Bill No. 229; McNutt)* ADDING CERTAIN COMMERCIAL MOTOR VEHICLES TO THE LIST OF MOTOR VEHICLES ON WHICH DEMONSTRATOR LICENSE PLATES MAY BE USED; AND AMENDING SECTION 61-4-129, MCA 503

130 *(House Bill No. 250; Menahan)* REPEALING THE STATUTE CODIFYING THE CRIMINAL JUSTICE PROCEDURE REQUIRING A PROSECUTOR TO NOTIFY A DEFENDANT OF AN INTENT TO INTRODUCE EVIDENCE OF PREVIOUS CRIMES; AMENDING SECTION 46-13-110, MCA; REPEALING SECTION 46-13-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 504

131 *(House Bill No. 298; McNutt)* PROVIDING A DEFINITION OF "STEERING AXLE" FOR THE PURPOSES OF GROSS VEHICLE WEIGHT REQUIREMENTS; AND AMENDING SECTION 61-10-104, MCA. 506

132 *(House Bill No. 319; McNutt)* REQUIRING A PERSON BIDDING ON CERTAIN PUBLIC CONSTRUCTION CONTRACTS TO LIST THE PERSON'S SPECIAL FUEL USER'S PERMIT NUMBER ON THE BID, IF APPLICABLE 507

133 *(House Bill No. 324; MacLaren)* REVISING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION AND PLAN; REDUCING THE NUMBER OF INSURANCE REJECTIONS OR RESTRICTIONS REQUIRED UNDER THE "ELIGIBLE PERSON" DEFINITION; INCREASING THE NUMBER OF PUBLIC MEMBERS OF THE ASSOCIATION BOARD; CHANGING PREMIUM LIMITS; INCREASING ELIGIBILITY FOR PREMIUM ASSISTANCE; INCREASING LIFETIME BENEFITS; AMENDING SECTIONS 33-22-1501, 33-22-1504, 33-22-1512, AND 33-22-1521, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 508

134 *(House Bill No. 337; Menahan)* REVISING DEFINITIONS RELATED TO FISH AND GAME VIOLATIONS; AND AMENDING SECTIONS 87-1-513, 87-2-101, 87-2-114, AND 87-2-807, MCA 514

135 *(House Bill No. 338; Esp)* REVISING STANDARDS AND FEES FOR DOCUMENTS SUBMITTED TO COUNTY CLERKS FOR RECORDING; AND AMENDING SECTIONS 7-4-2636 AND 7-4-2637, MCA. 517

136 *(House Bill No. 401; Arntzen)* REVISING THE DEFINITION OF "ROTATION AREA" IN THE MONTANA PROFESSIONAL TOW TRUCK ACT; AND AMENDING SECTION 61-8-903, MCA 519

137 *(House Bill No. 403; MacLaren)* ELIMINATING THE REQUIREMENT THAT LOCAL OPTION CLUSTER DEVELOPMENT AND OPEN SPACE REGULATIONS MANDATE THAT OPEN SPACE IN CLUSTER DEVELOPMENTS MUST SOLELY BE PRESERVED THROUGH AN IRREVOCABLE COVENANT; AMENDING SECTIONS 70-17-203 AND 76-3-509, MCA; AND PROVIDING AN EFFECTIVE DATE. 520

138 *(House Bill No. 432; Berry)* ALLOWING BANKS AND CREDIT UNIONS TO OFFER DEBT CANCELLATION OR SUSPENSION PROGRAMS IF AUTHORIZED BY THE DEPARTMENT OF ADMINISTRATION; REQUIRING THE DEPARTMENT TO ADOPT RULES GOVERNING DEBT CANCELLATION AND SUSPENSION PROGRAMS; PROVIDING THAT DEBT CANCELLATION AND SUSPENSION PROGRAMS OFFERED BY BANKS AND CREDIT UNIONS ARE NOT INSURANCE

PRODUCTS SUBJECT TO THE MONTANA INSURANCE CODE; AND AMENDING SECTIONS 32-1-429 AND 32-3-609, MCA. 521

139 *(House Bill No. 449; Blasdel)* REVISING PENALTIES FOR THE INTENTIONAL, UNLAWFUL IMPORTATION, INTRODUCTION, AND TRANSPLANTATION OF FISH; AND AMENDING SECTION 87-5-721, MCA. 522

140 *(House Bill No. 467; Brodehl)* EXPANDING THE INDIVIDUAL INCOME TAX AND CORPORATE LICENSE TAX CREDIT FOR CONTRIBUTIONS TO FOUNDATIONS AND ENDOWMENT FUNDS OF A UNIVERSITY OR COLLEGE TO INCLUDE FOUNDATIONS AND ENDOWMENT FUNDS OF COMMUNITY COLLEGES, TRIBAL COLLEGES, AND UNITS OR CAMPUSES OF THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 15-30-2326, 15-31-135, 15-31-136, AND 20-26-603, MCA; AND PROVIDING AN APPLICABILITY DATE 523

141 *(House Bill No. 481; Belcourt)* DESIGNATING REGIONAL WATER AUTHORITIES AS PUBLIC ENTITIES FOR THE PURPOSE OF ACQUIRING RIGHTS-OF-WAY ON CERTAIN STATE LANDS; AND AMENDING SECTIONS 77-2-103 AND 77-2-351, MCA. 525

142 *(House Bill No. 517; McNutt)* REVISING WEIGHT REQUIREMENTS FOR WEIGH STATIONS; AND AMENDING SECTION 61-10-141, MCA . . . 526

143 *(House Bill No. 523; Arntzen)* GENERALLY REVISING THE MONTANA PROFESSIONAL TOW TRUCK ACT; REQUIRING A LETTER OF APPOINTMENT TO PARTICIPATE IN THE LAW ENFORCEMENT ROTATION SYSTEM; PROVIDING REQUIREMENTS FOR A TOW TRUCK OPERATOR TO RECEIVE A LETTER OF APPOINTMENT; REVISING EXISTING DEPARTMENT RULEMAKING AUTHORITY; AND AMENDING SECTIONS 61-8-903, 61-8-904, AND 61-8-908, MCA . 527

144 *(House Bill No. 568; Wagner)* CLARIFYING LAWS RELATED TO THE DISPOSITION OF STATE-OWNED WATER PROJECTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; DIRECTING THE DEPARTMENT TO ATTEMPT TO DISPOSE OF THE CATARACT DAM PROJECT; AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 532

145 *(House Bill No. 422; Hale)* AUTHORIZING PERMIT CONTRACTORS UNDER THE METAL MINE RECLAMATION LAWS TO DIRECTLY INVOICE THE PERMIT APPLICANT; AMENDING SECTION 82-4-335, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 533

146 *(House Bill No. 41; Stahl)* PROVIDING THE DEPARTMENT OF ADMINISTRATION WITH DISCRETION TO DESIGNATE AN INDEPENDENT AUDITOR TO PERFORM AN AUDIT OF A LOCAL GOVERNMENT ENTITY; AND AMENDING SECTION 2-7-506, MCA . 537

147 *(House Bill No. 49; Hands)* AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION AND FOR BOND ISSUANCE COSTS; PROVIDING A STATUTORY APPROPRIATION TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION; CONDITIONING THE ISSUANCE OF THE BONDS AND THE APPROPRIATION ON RATIFICATION OF A WATER RIGHTS COMPACT BY THE BLACKFEET TRIBE, THE LEGISLATURE, AND

THE CONGRESS OF THE UNITED STATES; AMENDING SECTIONS 17-7-502 AND 85-20-1505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 537

148 *(House Bill No. 77; Pease-Lopez)* ELIMINATING THE PUBLISHING POLICY COMMITTEE; AMENDING SECTIONS 18-7-302 AND 18-7-306, MCA; AND REPEALING SECTIONS 2-15-1017, 18-7-303, AND 18-7-305, MCA. 540

149 *(House Bill No. 102; Menahan)* REVISING AND CLARIFYING PROBATIONARY AND SUSPENDED DRIVER'S LICENSE PROVISIONS AND PROVISIONS RELATED TO DRIVER REHABILITATION CLASSES FOR OFFENSES OF DRIVING UNDER THE INFLUENCE; SPECIFYING DUI COURT AUTHORITY CONCERNING DRIVER'S LICENSES; AMENDING SECTIONS 61-2-302, 61-5-205, 61-5-208, AND 61-8-734, MCA; AND PROVIDING AN APPLICABILITY DATE 541

150 *(House Bill No. 110; Welborn)* GENERALLY REVISING WORKERS' COMPENSATION STATUTES; REQUIRING WORKERS' COMPENSATION INSURERS AND THEIR AGENTS TO PAY MEDICAL PROVIDERS ON A TIMELY AND APPROPRIATE BASIS AND PROVIDING PENALTIES ON THE INSURER FOR FAILURE TO DO SO; CLARIFYING THE GROUNDS ON WHICH AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE MAY BE REVOKED; CLARIFYING THAT INTEREST ON A SECURITY DEPOSIT ACCRUES TO THE INSURER; AMENDING SECTIONS 39-71-107, 39-71-418, AND 39-71-2215, MCA; AND PROVIDING AN EFFECTIVE DATE 546

151 *(House Bill No. 116; Ingraham)* PROVIDING FOR ACTUARIAL FUNDING OF THE TEACHERS' RETIREMENT SYSTEM; ESTABLISHING EMPLOYER LIABILITY REGARDING REPORTS RELATING TO RETIRED MEMBERS; CHANGING THE ACTUARIAL INTEREST RATE ON SERVICE PURCHASE AGREEMENTS; AMENDING PROVISIONS GOVERNING WORKING RETIREES; REVISING CAPS ON COMPENSATION THAT CAN BE USED IN THE CALCULATION OF AVERAGE FINAL COMPENSATION; PROVIDING FOR A FULL ACTUARIAL REDUCTION FOR EARLY RETIREMENT; AMENDING SECTIONS 19-20-208, 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-410, 19-20-416, 19-20-427, 19-20-715, 19-20-731, AND 19-20-802, MCA; AND PROVIDING AN EFFECTIVE DATE 549

152 *(House Bill No. 123; McClafferty)* REVISING CERTAIN DEADLINES RELATIVE TO SCHOOL AND LOCAL GOVERNMENT FINANCING LAWS; AMENDING SECTIONS 7-6-4036, 15-10-305, 20-3-205, 20-3-209, 20-7-705, 20-9-115, 20-9-121, 20-9-131, 20-9-134, 20-9-141, 20-9-142, 20-9-151, 20-9-152, 20-9-213, 20-9-439, 20-9-501, 20-9-503, 20-9-506, 20-9-533, 20-9-534, 20-9-604, 20-10-144, 20-10-146, 20-10-147, AND 20-15-313, MCA; REPEALING SECTION 20-9-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 557

153 *(House Bill No. 131; Menahan)* ELIMINATING THE REQUIREMENT FOR THE STATE TO RECOVER FROM A CITY OR COUNTY A PERCENTAGE OF CERTAIN COSTS RELATED TO INCIDENTS INVOLVING HAZARDOUS MATERIAL OR ORPHANED HAZARDOUS MATERIAL; AND AMENDING SECTIONS 10-3-1203 AND 10-3-1216, MCA. 575

154 *(House Bill No. 134; Squires)* IMPROVING THE ACTUARIAL UNFUNDED LIABILITY OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM BY INCREASING THE TIME PERIOD USED IN CALCULATING HIGHEST AVERAGE

COMPENSATION FOR NEW HIRES; AMENDING SECTION 19-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE 577

155 *(House Bill No. 135; Squires)* INCREASING THE TIME PERIOD FOR CALCULATING HIGHEST AVERAGE COMPENSATION FOR INDIVIDUALS WHO INITIALLY BECOME MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM AFTER JUNE 30, 2011; AMENDING SECTION 19-7-101, MCA; AND PROVIDING AN EFFECTIVE DATE 578

156 *(House Bill No. 185; Berry)* LISTING SYNTHETIC MARIJUANA AND SALVIA AS DANGEROUS DRUGS; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING PENALTIES; AMENDING SECTIONS 44-12-102, 45-9-101, 45-9-102, 45-9-110, 50-31-306, 50-31-310, AND 50-32-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 579

157 *(House Bill No. 225; Welborn)* PROVIDING A QUALIFIED EXEMPTION FROM THE ENVIRONMENTAL REVIEW COMPLIANCE LAWS FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS WHEN THE DEPARTMENT ACTS AS A SNOWMOBILE AREA OPERATOR OR WHEN THE DEPARTMENT PROVIDES FUNDING ASSISTANCE TO A SNOWMOBILE AREA OPERATOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 592

158 *(House Bill No. 256; Wilmer)* PROVIDING FOR RECOGNITION IN MONTANA LAW OF THE RIGHT OF A MEMBER OF THE ARMED FORCES TO CONTROL THE DISPOSITION OF THE MEMBER'S REMAINS BY EXECUTION OF A DEPARTMENT OF DEFENSE FORM 93; AMENDING SECTION 37-19-904, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. 593

159 *(House Bill No. 269; Lavin)* ESTABLISHING THE BLUE ALERT PROGRAM WITHIN THE DEPARTMENT OF JUSTICE TO ASSIST IN NOTIFICATION TO PERSONS CONCERNING AND CAPTURE OF PERSONS RESPONSIBLE FOR THE DEATH OR SERIOUS INJURY OF A PEACE OFFICER 594

160 *(House Bill No. 315; MacDonald)* ESTABLISHING A SAFE WORKING PRESSURE FACTOR FOR HISTORICAL BOILERS; REVISING REQUIREMENTS FOR TRACTION ENGINEER LICENSES; AND AMENDING SECTIONS 50-74-218 AND 50-74-307, MCA 595

161 *(House Bill No. 391; Berry)* PROVIDING THAT THE POWER OF INITIATIVE DOES NOT EXTEND TO THE PRIORITIZATION OF THE ENFORCEMENT OF ANY STATE LAW BY A UNIT OF LOCAL GOVERNMENT; AND AMENDING SECTION 7-5-131, MCA 596

162 *(House Bill No. 430; Loney)* REVISING LAWS REGARDING THE ADMINISTRATION OF CONSERVATION DISTRICTS; REVISING PROVISIONS RELATED TO THE REORGANIZATION OF DISTRICT GOVERNING BODIES; CLARIFYING THE COMPOSITION OF DISTRICT GOVERNING BODIES WHEN A PORTION OF AN INCORPORATED MUNICIPALITY IS LOCATED WITHIN THE BOUNDARY OF A CONSERVATION DISTRICT; AMENDING SECTIONS 76-15-301, 76-15-311, AND 76-15-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 597

163 *(House Bill No. 487; Clark)* PROVIDING FOR LIFE INSURANCE COVERAGE FOR NONSPECIFIED DISCRETIONARY GROUPS THAT MEET CERTAIN REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 599

164 *(House Bill No. 498; MacLaren)* AUTHORIZING AN IRRIGATION DISTRICT TO ISSUE BONDS OR ENTER INTO A CONTRACT WITH THE UNITED STATES IF APPROVED BY A MAJORITY VOTE OF THE VOTERS THAT ARE ELIGIBLE TO VOTE WITHIN THE IRRIGATION DISTRICT; AMENDING SECTIONS 85-7-2013, 85-7-2014, 85-7-2016, AND 85-7-2032, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 599

165 *(House Bill No. 528; Smith)* REVISING LAWS RELATING TO THE MONTANA COWBOY HALL OF FAME; REVISING LAWS RELATING TO ITS LOCATION; PROVIDING FOR ROAD SIGNS TO RECOGNIZE THE SITE; AND AMENDING SECTION 1-1-525, MCA. 601

166 *(House Bill No. 594; Sesso)* REQUIRING THE DEPARTMENT OF TRANSPORTATION TO USE POSTCONSUMER RECYCLED MATERIAL IN A HIGHWAY CONSTRUCTION PROJECT WHEN THE POSTCONSUMER RECYCLED MATERIAL MEETS SPECIFICATIONS AND THE COST IS LESS THAN OR EQUAL TO THE COST OF OTHER MATERIALS 602

167 *(House Bill No. 334; Reichner)* GENERALLY REVISING WORKERS' COMPENSATION LAWS; PROVIDING FOR CLOSURE OF CLAIMS; PROVIDING A PROCESS TO REOPEN MEDICAL CLAIMS; ESTABLISHING A MEDICAL DIRECTOR AND MEDICAL REVIEW PANEL; REVISING PERMANENT PARTIAL DISABILITY DEFINITION AND BENEFITS; CLARIFYING WHAT CONSTITUTES COURSE AND SCOPE OF EMPLOYMENT; ALLOWING RETROACTIVE BENEFIT PAYMENTS TO CERTAIN WORKERS; PROVIDING FOR SETTLEMENTS OF MEDICAL CLAIMS; PROVIDING FOR INSURER DESIGNATION OF TREATING PHYSICIANS; PROVIDING PAY SCALES FOR TREATING PHYSICIANS AND HEALTH CARE PROVIDERS; PROVIDING CERTAIN LIMITATIONS ON MEDICAL PAY SCHEDULES FOR THE BIENNIUM; REQUIRING THE LEGISLATIVE AUDITOR TO SUBMIT REPORTS ON THE MONTANA STATE FUND TO THE INSURANCE COMMISSIONER; REVISING VOCATIONAL REHABILITATION SERVICES AND TERMS TO ASSIST AN EMPLOYEE IN STAYING AT WORK OR RETURNING TO WORK; CREATING A STAY-AT-WORK/RETURN-TO-WORK ASSISTANCE FUND AND PROVIDING FOR ASSESSMENTS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 39-71-105, 39-71-116, 39-71-118, 39-71-225, 39-71-315, 39-71-320, 39-71-403, 39-71-407, 39-71-703, 39-71-704, 39-71-711, 39-71-721, 39-71-736, 39-71-741, 39-71-1011, 39-71-1025, 39-71-1031, 39-71-1101, 39-71-1102, 39-71-1106, AND 39-71-2361, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 603

168 *(House Bill No. 508; McNally)* REVISING COMPENSATION FOR RURAL FIREFIGHTERS; PROVIDING PAYMENT OF A PARTIAL SALARY TO RURAL FIREFIGHTERS WHO ARE INJURED IN THE PERFORMANCE OF THEIR DUTIES; AND LIMITING THE PAYMENT OF THE PARTIAL SALARY TO FULL-PAID EMPLOYEES UNDER CERTAIN CIRCUMSTANCES 639

169 *(Senate Bill No. 222; Augare)* REVISING QUALIFICATIONS OF FIREFIGHTERS; AND AMENDING SECTIONS 7-33-4107 AND 7-33-4108, MCA 640

170 *(House Bill No. 66; Swanson)* CLARIFYING THAT THE STATE RECORDS COMMITTEE IS ADMINISTERED BY THE SECRETARY OF STATE; PROVIDING THAT THE SECRETARY OF STATE'S REPRESENTATIVE IS THE PRESIDING OFFICER; PROVIDING RULEMAKING

AUTHORITY; AND AMENDING SECTIONS 2-6-203 AND 2-15-1013, MCA. 641

171 *(House Bill No. 421; Malek)* EXPANDING THE RANGE OF ORGANIZATIONS THAT ARE ALLOWED TO ADMINISTER ADULT BASIC EDUCATION PROGRAMS; AND AMENDING SECTIONS 20-7-702 AND 20-7-712, MCA 642

172 *(House Bill No. 480; Menahan)* ALLOWING THE APPOINTMENT OF A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT NOT OF RECORD, ANY ATTORNEY, OR THE CLERK OF THE JUSTICE'S COURT OF RECORD TO ACT AS A JUDGE PRO TEMPORE IN A JUSTICE'S COURT OF RECORD; AND AMENDING SECTION 3-10-116, MCA. 642

173 *(House Bill No. 547; Peterson)* PROVIDING INSURANCE COVERAGE FOR ADVANCED PRACTICE REGISTERED NURSES AND REGISTERED NURSE FIRST ASSISTANTS IN A MANNER SIMILAR TO PHYSICIAN ASSISTANTS; INCLUDING REGISTERED NURSE FIRST ASSISTANTS AS PROVIDERS IN HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING THE BOARD OF NURSING TO SPECIFY CRITERIA FOR A REGISTERED NURSE FIRST ASSISTANT; AMENDING SECTIONS 33-22-114, 33-31-102, AND 37-8-202, MCA; AND PROVIDING AN EFFECTIVE DATE. 643

174 *(House Bill No. 566; Yates)* REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SQUARE THE NUMBER OF POINTS PURCHASED BY AN APPLICANT WHEN CONDUCTING LICENSE AND PERMIT DRAWINGS; AMENDING SECTION 87-1-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 647

175 *(Senate Bill No. 74; Steinbeisser)* CONFORMING CERTAIN TERMS REGARDING THE FINANCIAL STATUS OF COMMODITY DEALERS AND COMMODITY WAREHOUSE OPERATORS TO TERMS USED IN GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REVISING AND CLARIFYING THE LICENSING REQUIREMENTS FOR COMMODITY DEALERS; ALLOWING FOR FULL OR 110% BONDING BY A COMMODITY DEALER OF COMMODITIES PURCHASED ON CONTRACT; AMENDING SECTIONS 80-4-402, 80-4-405, 80-4-421, 80-4-502, 80-4-505, 80-4-506, 80-4-601, AND 80-4-604, MCA; AND PROVIDING AN EFFECTIVE DATE. 649

176 *(Senate Bill No. 76; Jent)* PROVIDING FOR PAROLE ELIGIBILITY FOR PERSONS SENTENCED TO THE CUSTODY OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND CONFINED IN CERTAIN STATE FACILITIES; AND AMENDING SECTION 46-23-201, MCA 657

177 *(Senate Bill No. 91; Brown)* REVISING POSTAL SERVICE REQUIREMENTS FOR PROPOSED CITIES AND TOWNS; AMENDING SECTION 7-2-4101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 657

178 *(Senate Bill No. 115; Hinkle)* PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM DISCLOSING INFORMATION THAT IDENTIFIES ANY PERSON WHO HAS LAWFULLY TAKEN A LARGE PREDATOR DURING A HUNT WITHOUT THE WRITTEN CONSENT OF THE PERSON AFFECTED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 658

179 *(Senate Bill No. 118; Jent)* CLARIFYING THAT OUTFITTERS MAY CONTRACT FOR EQUIPMENT TO MEET LICENSING REQUIREMENTS; AMENDING SECTIONS 37-47-302 AND 37-47-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 659

180 *(House Bill No. 187; Connell)* REQUIRING THE TRANSPORTATION COMMISSION AND COUNTIES TO USE MONTANA-MADE WOODEN PRODUCTS IN CERTAIN ROAD AND BRIDGE CONSTRUCTION OR RECONSTRUCTION PROJECTS 660

181 *(House Bill No. 195; Rosendale)* REQUIRING THAT A DRIVER'S LICENSE CONTAIN THE LICENSEE'S RESIDENCE ADDRESS UNLESS THE LICENSEE REQUESTS USE OF THE MAILING ADDRESS; AND AMENDING SECTION 61-5-111, MCA 661

182 *(House Bill No. 330; Bennett)* REQUIRING VOTER REGISTRATION FORMS TO BE STANDARDIZED AND TO PROVIDE AN OPTION FOR REQUESTING TO BE PLACED ON THE ABSENTEE BALLOT LIST TO RECEIVE ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 13-2-110, 13-13-212, AND 13-21-210, MCA 664

183 *(House Bill No. 339; Bangerter)* ELIMINATING THE LIMIT ON THE NUMBER OF CLASS B-13 NONRESIDENT YOUTH BIG GAME COMBINATION LICENSES THAT MAY BE SOLD; AMENDING SECTION 87-2-522, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 667

184 *(House Bill No. 479; Small)* GRANTING THE BOARD OF OIL AND GAS CONSERVATION RULEMAKING AUTHORITY TO REGULATE AS INJECTION WELLS INJECTIONS TO RESTORE OR ENHANCE THE MICROBIAL CONVERSION OF HYDROCARBON SUBSTRATES TO METHANE GAS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 668

185 *(House Bill No. 491; Cuffe)* AUTHORIZING PUBLIC PROCUREMENT UNITS TO PURCHASE COOPERATIVELY FROM CERTAIN COOPERATIVE ENTITIES; AMENDING SECTION 18-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 668

186 *(House Bill No. 575; Hansen)* GENERALLY REVISING ANNEXATION LAWS; ALLOWING ANNEXATION OF CERTAIN PARCELS IF ALL OWNERS OF PROPERTY TO BE ANNEXED AGREE; PROVIDING FOR COORDINATION AND CONSULTATION WITH THE COUNTY OR COUNTIES IN WHICH THE MUNICIPALITY RESIDES FOR PURPOSES OF TRANSFERRING SERVICES; PROVIDING A PROCESS FOR THE TRANSFER OF FIRE PROTECTION SERVICES FROM A RURAL FIRE DISTRICT; ELIMINATING THE RESTRICTION ON ANNEXATION OF LANDS WITHIN RURAL FIRE DISTRICTS THAT HAVE BEEN ESTABLISHED FOR MORE THAN 10 YEARS; PROVIDING THAT A COUNTY MAY PETITION A COURT TO REVIEW THE ANNEXATION PROCEDURES OF A MUNICIPALITY; AMENDING SECTIONS 7-2-4601, 7-2-4606, 7-2-4608, 7-2-4705, 7-2-4731, 7-2-4732, 7-2-4734, AND 7-2-4741, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 668

187 *(Senate Bill No. 3; Hawks)* REQUIRING STATE AGENCIES AND THE MONTANA UNIVERSITY SYSTEM TO BIENNIALLY REPORT TO THE PRESERVATION REVIEW BOARD ON THE STATUS AND MAINTENANCE NEEDS OF AGENCY HERITAGE PROPERTIES; REQUIRING THE STATE HISTORIC PRESERVATION OFFICER TO REPORT THE INFORMATION TO THE LEGISLATURE; AND AMENDING SECTIONS 22-3-422, 22-3-423, AND 22-3-424, MCA 673

188 *(Senate Bill No. 5; Brown)* REPEALING THE TERMINATION DATE FOR THE TRANSFER OF CERTAIN FUNCTIONS FROM THE DEPARTMENT OF LIVESTOCK TO THE BOARD OF MILK CONTROL UNDER THE MILK CONTROL LAWS; REPEALING SECTION 20,

CHAPTER 361, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 675

189 *(Senate Bill No. 9; Keane)* AUTHORIZING THE USE OF PETROLEUM MIXING ZONES IN THE REMEDIATION AND RESOLUTION OF PETROLEUM RELEASES; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-11-307, 75-11-309, 75-11-503, AND 75-11-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 675

190 *(Senate Bill No. 55; Jent)* IMPLEMENTING THE FEDERAL MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT; AMENDING SECTIONS 13-13-205, 13-21-201, AND 13-21-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 683

191 *(Senate Bill No. 160; Vincent)* AUTHORIZING THE USE OF OFF-HIGHWAY VEHICLES ON DESIGNATED ROADS AND DESIGNATED TRAILS WITHIN STATE PARKS AND FISHING ACCESS SITES; AND AMENDING SECTION 23-1-128, MCA 685

192 *(Senate Bill No. 194; Brenden)* IMPLEMENTING A UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT; REVISING PROVISIONS FOR THE NOMINATION AND MEETING OF PRESIDENTIAL ELECTORS; REQUIRING EACH NOMINEE FOR PRESIDENTIAL ELECTOR TO EXECUTE A PLEDGE TO VOTE FOR THE PRESIDENTIAL CANDIDATE OF THE PARTY THAT NOMINATED THE ELECTOR; REQUIRING CERTIFICATION OF THE ELECTORS BY THE GOVERNOR; REVISING PROVISIONS TO FILL A VACANT ELECTOR POSITION; REQUIRING THE SECRETARY OF STATE TO CERTIFY THE FINAL VOTE; AND REPEALING SECTIONS 13-25-104, 13-25-105, AND 13-25-107, MCA 685

193 *(Senate Bill No. 208; Erickson)* ALLOWING SATURDAY SCHOOL IN K-12 SCHOOLS; REQUIRING THAT SATURDAY SCHOOL BE VOLUNTARY; REQUIRING THAT SATURDAY SCHOOL IS NOT A PUPIL-INSTRUCTION DAY AND DOES NOT COUNT TOWARD THE MINIMUM AGGREGATE HOURS OF PUPIL INSTRUCTION; AND AMENDING SECTION 20-1-303, MCA. 688

194 *(Senate Bill No. 210; Tutvedt)* MAKING IT A CRIMINAL OFFENSE FOR A PERSON TO OBTAIN OR ATTEMPT TO OBTAIN A DANGEROUS DRUG BY MAKING CERTAIN COMMUNICATIONS WITH A PERSON AUTHORIZED TO WRITE PRESCRIPTIONS FOR OR DISPENSE DANGEROUS DRUGS; AND AMENDING SECTIONS 26-1-805 AND 45-9-104, MCA 688

195 *(Senate Bill No. 223; Zinke)* REVISING THE PENSION BENEFIT PROVIDED BY THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-17-404, MCA; AND PROVIDING AN EFFECTIVE DATE 689

196 *(Senate Bill No. 236; Buttrey)* REVISING THE SOLID WASTE MANAGEMENT LAWS RELATED TO POWERS AND DUTIES OF LOCAL GOVERNMENTS; CLARIFYING A LOCAL GOVERNMENT'S AUTHORITY TO CONTROL THE DISPOSITION OF SOLID WASTE GENERATED WITHIN THE JURISDICTION OF THE LOCAL GOVERNMENT; AMENDING SECTION 75-10-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 690

197 *(Senate Bill No. 248; Gillan)* ALLOWING A BOARD OF COUNTY COMMISSIONERS TO APPOINT A COUNTY TAX APPEAL BOARD WITH THE NUMBER OF MEMBERS OVER THREE TO BE DETERMINED BY THE COUNTY; PROVIDING THAT IN COUNTIES WITH BOARDS OF MORE THAN THREE MEMBERS, ONLY THREE OF

THE MEMBERS HEAR EACH APPEAL; AND AMENDING SECTION 15-15-101, MCA 691

198 *(Senate Bill No. 275; Zinke)* REVISING LAWS RELATING TO PUBLIC CEMETERIES; AUTHORIZING CEMETERY GROUNDS TO BE USED FOR ANOTHER PUBLIC PURPOSE WHEN CEMETERY GROUNDS ARE UNSUITABLE FOR THE INTERMENT OF BODIES; AND AMENDING SECTION 7-35-4102, MCA 692

199 *(Senate Bill No. 280; Brown)* AUTHORIZING THE COMMISSIONER OF HIGHER EDUCATION TO DEVELOP A SELF-INSURED STUDENT HEALTH PLAN FOR ENROLLED STUDENTS OF THE MONTANA UNIVERSITY SYSTEM AND THEIR DEPENDENTS, INCLUDING STUDENTS OF A COMMUNITY COLLEGE DISTRICT; AUTHORIZING CERTAIN METHODS BY WHICH THE COMMISSIONER MAY FINANCE THE COSTS TO ESTABLISH THE PLAN; AND AMENDING SECTION 33-1-102, MCA 693

200 *(Senate Bill No. 287; Keane)* REQUIRING THAT CERTAIN CORPORATE OFFICERS AND MANAGERS OF MANAGER-MANAGED LIMITED LIABILITY COMPANIES WORKING IN THE CONSTRUCTION INDUSTRY BE COVERED BY WORKERS' COMPENSATION OR OBTAIN AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; AMENDING SECTIONS 39-71-401 AND 39-71-417, MCA; AND PROVIDING AN EFFECTIVE DATE. 696

201 *(Senate Bill No. 290; Zinke)* EXCLUDING AN INDEPENDENT CONTRACTOR FROM THE DEFINITION OF EMPLOYEE UNDER HUMAN RIGHTS LAWS; AMENDING SECTIONS 49-2-101 AND 49-3-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 701

202 *(Senate Bill No. 355; Hamlett)* ESTABLISHING THE MONTANA UNIVERSITY SYSTEM ASSISTANCE PROGRAM TO BE FUNDED FROM PRIVATE DONATIONS; ESTABLISHING PROCEDURES AND REQUIREMENTS FOR THE BOARD OF REGENTS TO ADMINISTER THE PROGRAM; CREATING A STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 20-25-426, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 704

203 *(Senate Bill No. 268; Balyeat)* REQUIRING THAT SUPREME COURT JUSTICES BE ELECTED AND APPOINTED FROM SUPREME COURT DISTRICTS; ESTABLISHING SUPREME COURT DISTRICTS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT A SPECIAL ELECTION TO BE HELD CONCURRENTLY WITH THE 2012 PRIMARY ELECTION; AMENDING SECTIONS 3-2-101 AND 3-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 705

204 *(House Bill No. 61; MacLaren)* ALLOWING A LOCAL AUTHORITY TO SET REDUCED SPEED LIMITS ON CERTAIN UNPAVED ROADS; AND AMENDING SECTION 61-8-310, MCA. 707

205 *(House Bill No. 95; McNutt)* GENERALLY REVISING HUMAN RIGHTS LAW; CLARIFYING THE SUBPOENA POWER OF THE DEPARTMENT OF LABOR AND INDUSTRY AND THE COMMISSIONER OF LABOR AND INDUSTRY; AUTHORIZING AN INDIAN EMPLOYMENT PREFERENCE ON OR NEAR RESERVATIONS; DELETING THE UNDEFINED TERM "ADAPTIVE DESIGN" WITH RESPECT TO HOUSING DISCRIMINATION; EXTENDING DEADLINES FOR ADMINISTRATIVE ACTION IF THE PARTIES AGREE TO MEDIATION; AMENDING SECTIONS 49-2-203, 49-2-303, 49-2-305, 49-2-403, AND 49-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

206 *(House Bill No. 103; Fitzpatrick)* TO IMPROVE TAX ADMINISTRATION AND RECORDS MANAGEMENT BY AUTHORIZING THE DEPARTMENT OF REVENUE TO REPRODUCE ANY ORIGINAL TAX DOCUMENT AND TO MAINTAIN THE REPRODUCTION AS THE DEPARTMENT'S OFFICIAL RECORD; AUTHORIZING THE DEPARTMENT OF REVENUE TO DISPOSE OF ITS ORIGINAL TAX RECORDS THAT ARE REPRODUCED IN ACCORDANCE WITH RULES ADOPTED BY THE SECRETARY OF STATE IN CONSULTATION WITH THE STATE RECORDS COMMITTEE; AMENDING SECTIONS 2-6-110 AND 15-1-103, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. 708

207 *(House Bill No. 178; Howard)* REQUIRING THE DEPARTMENT OF JUSTICE TO USE THE FEDERAL SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM TO VERIFY THE LAWFUL PRESENCE IN THE UNITED STATES OF AN APPLICANT FOR A DRIVER'S LICENSE OR IDENTIFICATION CARD; AMENDING THE DEPARTMENT'S RULEMAKING AUTHORITY REGARDING ISSUANCE OF IDENTIFICATION CARDS; WITHDRAWING THE DEPARTMENT'S AUTHORITY TO APPOINT AGENTS FOR ISSUANCE OF IDENTIFICATION CARDS; AMENDING SECTIONS 61-5-105, 61-12-501, 61-12-502, AND 61-12-504, MCA; AND REPEALING SECTION 61-12-503, MCA. 716

208 *(House Bill No. 191; Flynn)* REVISING THE LICENSING AND REGISTRATION PROVISIONS FOR RETAIL FOOD ESTABLISHMENTS; EXEMPTING THE SALE OF BAKED GOODS AND PRESERVES FOR CHARITABLE COMMUNITY PURPOSES FROM THE LICENSING REQUIREMENTS; REVISING THE REGISTRATION PROVISIONS FOR CERTAIN NONPROFIT ORGANIZATIONS; AMENDING SECTIONS 50-50-103 AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 718

209 *(House Bill No. 213; Harris)* PROVIDING FOR THE OPERATION OF ELECTRIC VEHICLES BY DISABLED PERSONS; CREATING A LOW-SPEED RESTRICTED DRIVER'S LICENSE; DEFINING "LOW-SPEED ELECTRIC VEHICLE" AND "GOLF CART"; PROHIBITING THE OPERATION OF A LOW-SPEED ELECTRIC VEHICLE ON CERTAIN HIGHWAYS; PROVIDING FOR THE REGISTRATION OF A LOW-SPEED ELECTRIC VEHICLE AND A GOLF CART OPERATED BY A PERSON WITH A LOW-SPEED RESTRICTED DRIVER'S LICENSE; ALLOWING FOR OPERATION OF A LOW-SPEED ELECTRIC VEHICLE WITHOUT A MOTORCYCLE ENDORSEMENT; REQUIRING CERTAIN EQUIPMENT ON A LOW-SPEED ELECTRIC VEHICLE; AMENDING SECTIONS 10-3-1307, 23-1-105, 61-1-101, 61-3-201, 61-3-301, 61-3-312, 61-3-321, 61-3-332, 61-5-102, 61-6-158, 61-9-220, AND 61-9-432, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 720

210 *(House Bill No. 251; Hoven)* PROVIDING THAT A REAR FLAG VEHICLE ESCORT IS NOT REQUIRED FOR CERTAIN VEHICLES OVER 12 1/2 FEET IN WIDTH EXCEPT IF THE VEHICLE PASSES THROUGH A HAZARDOUS AREA; AND AMENDING SECTION 61-10-102, MCA. . . 743

211 *(House Bill No. 288; Sands)* CLARIFYING THAT THE RESIDENCY OF A CHILD ENROLLED IN SCHOOL WHO IS RESIDING WITH A LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE IS THE RESIDENCE OF THE LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE; CLARIFYING ACTIONS THAT A SCHOOL DISTRICT MAY TAKE WHEN A STUDENT WHO WAS SUBJECT TO FORMAL DISCIPLINARY ACTION AT A PREVIOUS SCHOOL SEEKS

TO ENROLL; CLARIFYING THE LANGUAGE OF THE CARETAKER RELATIVE AFFIDAVIT; MAKING FINANCIAL RESPONSIBILITY FOR SPECIAL EDUCATION CONSISTENT WITH OTHER PROVISIONS REGARDING RESIDENCY; AMENDING SECTIONS 1-1-215, 20-5-321, 20-5-502, 20-5-503, AND 20-7-420, MCA; AND PROVIDING AN EFFECTIVE DATE 745

212 *(House Bill No. 300; Flynn)* REVISING LABOR LAWS; PROVIDING THAT THE WORKDAY FOR UNDERGROUND MINERS, SMELTER WORKERS, AND EMPLOYEES AT STRIP MINES, CEMENT PLANTS, AND QUARRIES MAY NOT EXCEED 8 HOURS A DAY UNLESS THE EMPLOYER AND EMPLOYEE AGREE TO A WORKDAY OF MORE THAN 8 HOURS; REVISING PENALTIES; AND AMENDING SECTIONS 39-4-103, 39-4-104, 39-4-107, AND 39-4-109, MCA. 751

213 *(House Bill No. 352; Osmundson)* ALLOWING THE USE OF BOTTLED WATER FOR A PUBLIC WATER SYSTEM TO ACHIEVE COMPLIANCE WITH A MAXIMUM CONTAMINANT LEVEL FOR NITRATE; AMENDING SECTION 75-6-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 754

214 *(House Bill No. 380; Blasdel)* GENERALLY REVISING WATER AND SEWER LAWS; REVISING THE METHOD OF ESTABLISHING THE MONTHLY SALARY FOR A MEMBER OF THE BOARD OF DIRECTORS OF A COUNTY WATER AND SEWER DISTRICT; PROVIDING THAT A BOARD MEMBER MAY RECEIVE A CERTAIN SALARY IF PROPOSED BY THE PRESIDENT OF THE BOARD AND APPROVED BY THE MEMBERS OF THE DISTRICT; CLARIFYING THE DUTIES OF BOARD PRESIDENTS; AUTHORIZING A VOTE ON THE MONTHLY SALARY OF BOARD MEMBERS; PROVIDING CRITERIA FOR DETERMINING A VACANCY ON A WATER AND SEWER DISTRICT BOARD; ELIMINATING DATE REQUIREMENTS FOR SUBMITTING WATER AND SEWER DISTRICT ASSESSMENTS TO THE CLERK AND RECORDER; REPEALING PROCEDURES FOR CHALLENGING MUNICIPAL SEWER SYSTEM RATES BY FILING A COMPLAINT WITH THE PUBLIC SERVICE COMMISSION; ELIMINATING PUBLIC SERVICE COMMISSION REGULATION OF MUNICIPAL SEWER AND WATER SYSTEMS AND RATES; AMENDING SECTIONS 7-3-4302, 7-13-2225, 7-13-2262, 7-13-2272, 7-13-2273, 7-13-2282, 7-13-4312, 69-3-101, AND 76-3-103, MCA; REPEALING SECTIONS 7-13-4208 AND 7-13-4310, MCA; AND PROVIDING AN APPLICABILITY DATE 754

215 *(House Bill No. 529; Stahl)* REVISING THE FEES CHARGED BY A COUNTY FOR RECORDING THE LOCATION OF AND ANNUAL LABOR ON CERTAIN MINING CLAIMS; AND AMENDING SECTION 7-4-2631, MCA. 761

216 *(House Bill No. 535; Knudsen)* REPLACING THE CURRENT MONTANA UNIFORM LIMITED PARTNERSHIP ACT WITH THE MOST RECENT VERSION OF THE UNIFORM LIMITED PARTNERSHIP ACT; AMENDING SECTIONS 35-12-502, 35-12-504, 35-12-505, 35-12-506, 35-12-508, 35-12-509, 35-12-510, 35-12-601, 35-12-602, 35-12-603, 35-12-604, 35-12-605, 35-12-607, 35-12-610, 35-12-701, 35-12-703, 35-12-704, 35-12-705, 35-12-801, 35-12-803, 35-12-901, 35-12-902, 35-12-1001, 35-12-1005, 35-12-1006, 35-12-1103, 35-12-1105, 35-12-1201, 35-12-1202, 35-12-1301, 35-12-1302, 35-12-1307, 35-12-1308, 35-12-1401, 35-12-1402, 35-12-1403, AND 35-12-1404, MCA; AND REPEALING SECTIONS 35-12-503, 35-12-606, 35-12-608, 35-12-609, 35-12-702, 35-12-802, 35-12-804, 35-12-805, 35-12-903, 35-12-904, 35-12-1002, 35-12-1003, 35-12-1004, 35-12-1007, 35-12-1008, 35-12-1101, 35-12-1102,

35-12-1104, 35-12-1203, 35-12-1204, 35-12-1303, 35-12-1304, 35-12-1305, AND 35-12-1306, MCA 762

217 *(Senate Bill No. 89; Wittich)* REDUCING THE TIME FOR REVIEW OF SUBDIVISION APPLICATIONS FOR PUBLIC AND PRIVATE WATER SUPPLIES, SEWAGE DISPOSAL FACILITIES, STORM WATER DRAINAGE WAYS, AND SOLID WASTE DISPOSAL BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND LOCAL DEPARTMENTS OR BOARDS OF HEALTH; CLARIFYING PROCEDURES FOR PROVIDING EVIDENCE OF SYSTEMS COMPLIANCE; REQUIRING THE DEPARTMENT TO NOTIFY APPLICANTS UNDER CERTAIN CIRCUMSTANCES IF AN APPLICATION DOES NOT INCLUDE EVIDENCE OF CERTIFICATION FROM THE LOCAL HEALTH DEPARTMENT OR APPROVAL FROM THE LOCAL GOVERNING BODY; REVISING PROCEDURES FOR DEPARTMENT REVIEW OF SUBDIVISION APPLICATIONS; AMENDING SECTIONS 76-4-104 AND 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 810

218 *(Senate Bill No. 140; Erickson)* EXEMPTING CERTAIN MOTOR CARRIERS FROM REGULATION BY THE PUBLIC SERVICE COMMISSION; DEFINING "CHARTER SERVICE"; AMENDING SECTIONS 69-12-101 AND 69-12-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 814

219 *(Senate Bill No. 179; Wittich)* ESTABLISHING THE HIGHWAY PATROL OFFICER DAVID DELAITTRE MEMORIAL HIGHWAY; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 817

220 *(Senate Bill No. 180; Sonju)* SUBSTITUTING THE TERM "CRIMINAL MISCHIEF DAMAGE TO RENTAL PROPERTY" FOR "DAMAGE TO RENTAL PROPERTY" AS AN OFFENSE; AMENDING SECTION 45-6-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 818

221 *(Senate Bill No. 184; Van Dyk)* ALLOWING THE USE OF BOWS AND ARROWS TO HUNT WILD BUFFALO; CLARIFYING THAT WILD BUFFALO MAY BE HUNTED WITH HUNTING ARMS OTHER THAN BOWS AND ARROWS; AND AMENDING SECTIONS 87-1-304, 87-2-730, AND 87-2-731, MCA 818

222 *(Senate Bill No. 213; Vuckovich)* ESTABLISHING A PINTLER VETERANS' MEMORIAL SCENIC HIGHWAY; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING THAT NEW ROADWAY MAPS INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 821

223 *(Senate Bill No. 304; Shockley)* GENERALLY REVISING DEPENDENCY AND NEGLECT LAWS; CLARIFYING VENUE AND CREATING LONG-ARM JURISDICTION OVER CHILDREN WHO HAVE BEEN REMOVED FROM THE STATE; CLARIFYING THAT MANDATORY REPORTERS OF SUSPECTED CHILD ABUSE MUST REPORT ABUSE REGARDLESS OF THE IDENTITY OF THE ABUSER; REMOVING DUPLICATION IN THE SHOW CAUSE HEARING PROCESS AND THE ADJUDICATION HEARING PROCESS; MODIFYING THE PROCEDURE FOR OBTAINING EMERGENCY PROTECTIVE SERVICES; AND AMENDING SECTIONS 41-3-103, 41-3-201, 41-3-301, 41-3-427, AND 41-3-432, MCA. 822

224 *(Senate Bill No. 320; Jones)* ENCOURAGING THE UPGRADING OF TRANSMISSION LINES WITHIN EXISTING RIGHTS-OF-WAY TO AVOID THE PROLIFERATION OF NEW TRANSMISSION CORRIDORS; CLARIFYING LEGISLATIVE FINDINGS AND CERTAIN DEFINITIONS UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-102 AND 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 828

225 *(House Bill No. 12; Menahan)* REVISING PENALTIES FOR ALCOHOL-RELATED DRIVING OFFENSES BY EXTENDING THE POSSIBLE JAIL TIME FOR CERTAIN MISDEMEANOR OFFENSES; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 832

226 *(House Bill No. 69; Menahan)* ENCOURAGING DUI COURT PARTICIPATION; REVISING PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; ALLOWING DUI COURTS TO SUSPEND ALL OR A PORTION OF IMPRISONMENT SENTENCES; DEFINING A DUI COURT; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY DATE 834

227 *(House Bill No. 125; Klock)* GENERALLY REVISING SECURITIES AND INSURANCE LAWS; PROVIDING CONSISTENCY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR JUDICIAL REVIEW OF A SECURITIES COMMISSIONER'S ORDER; INCLUDING CONFIDENTIAL DOCUMENTS RECEIVED FROM ANOTHER STATE AGENCY AS AMONG THOSE MAINTAINED AS CONFIDENTIAL BY THE INSURANCE COMMISSIONER; REMOVING REGULATION OF EXCESS DEPOSITS BY INSURERS; REVISING THE DEFINITION OF "INSURER" RELATING TO CAPTIVE RISK RETENTION GROUPS; APPLYING RISK-BASED CAPITAL REPORTING REQUIREMENTS TO CAPTIVE RISK RETENTION GROUPS; INCLUDING A TREND TEST FOR RISK-BASED CAPITAL REPORTING FOR PROPERTY AND CASUALTY INSURERS; REVISING THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL AND TAX CREDIT PROGRAM; REVISING LAWS RELATED TO CAPTIVE INSURANCE COMPANIES; ELIMINATING A PENALTY PROVISION; ELIMINATING CERTAIN REQUIREMENTS FOR BASIC AND STANDARD HEALTH BENEFIT PLANS; AMENDING SECTIONS 15-30-2368, 15-31-130, 30-10-115, 30-10-209, 30-10-308, 33-1-311, 33-2-601, 33-2-1501, 33-2-1903, 33-2-1904, 33-4-309, 33-18-605, 33-22-508, 33-22-1803, 33-22-1821, 33-22-2002, 33-22-2004, 33-22-2006, 33-22-2008, 33-28-102, 33-28-107, 33-28-108, AND 33-28-207, MCA; REPEALING SECTIONS 33-2-609, 33-22-103, 33-22-1827, AND 33-22-1828, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 836

228 *(House Bill No. 279; Smith)* PROVIDING DISASTER AND EMERGENCY SERVICES TO FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA; ALLOWING TRIBAL GOVERNMENTS TO REQUEST ASSISTANCE FROM THE GOVERNOR; AUTHORIZING EXPENDITURES WHEN JUSTIFIED BY A TRIBAL DISASTER OR EMERGENCY; REINSTATING SPENDING AUTHORITY WHEN EXPENDED FUNDS ARE RECOVERED; PROVIDING ASSISTANCE IN OBTAINING FEDERAL COMMUNITY DISASTER LOANS FOR TRIBAL GOVERNMENTS; PROVIDING FOR DEBRIS AND WRECKAGE REMOVAL FOR TRIBAL GOVERNMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-105, 10-3-310, 10-3-311, 10-3-313, 10-3-314, AND 10-3-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 863

229 *(House Bill No. 469; Clark)* CLARIFYING AND SIMPLIFYING THE NAME OF THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD; AMENDING SECTIONS 2-15-3110, 2-15-3111, 2-15-3112, 2-15-3113, AND 81-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 869

230 *(House Bill No. 548; Bangerter)* REGARDING REVOCATION OF SUSPENSION OR DEFERRAL OF A CRIMINAL SENTENCE; PROVIDING THAT A PETITION FOR REVOCATION MAY BE FILED WITH A COURT EITHER BEFORE THE PERIOD OF SUSPENSION OR DEFERRAL BEGINS TO RUN OR DURING THE PERIOD OF SUSPENSION OR DEFERRAL; AMENDING SECTION 46-18-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION 873

231 *(House Bill No. 584; Mehlhoff)* REVISING LICENSE PLATE LAWS; ALLOWING NEW STANDARD LICENSE PLATES TO BE OF CERTAIN PRIOR DESIGNS; AMENDING SECTIONS 61-3-301 AND 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 876

232 *(Senate Bill No. 28; Kaufmann)* CLARIFYING THAT MENTAL HEALTH DIVERSION GRANT AWARDS ARE BASED ON ADMISSIONS TO THE MONTANA STATE HOSPITAL; AMENDING SECTION 53-21-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 880

233 *(Senate Bill No. 43; Keane)* REVISING LAWS RELATED TO PRIMITIVE PARKS; REVISING THE LIST OF PRIMITIVE PARKS; REVISING THE TYPES OF DEVELOPMENT THAT MAY OCCUR IN PRIMITIVE PARKS; AND AMENDING SECTIONS 23-1-116, 23-1-117, AND 23-1-118, MCA . 881

234 *(Senate Bill No. 52; Tropila)* PROHIBITING THE LEGISLATIVE AUDITOR FROM EMPLOYING AN AUDITOR UNLESS A BACKGROUND CHECK IS MADE ON THE PROSPECTIVE EMPLOYEE; PROHIBITING THE LEGISLATIVE AUDITOR FROM EMPLOYING A PERSON IF THE LEGISLATIVE AUDITOR DETERMINES THAT THE PERSON IS NOT APPROPRIATE FOR EMPLOYMENT BY THE AUDITOR; AND AMENDING SECTION 5-13-305, MCA 882

235 *(Senate Bill No. 68; Jent)* CLARIFYING A DRIVER'S DUTY TO REMAIN AT THE SCENE OF AN ACCIDENT OR COLLISION INVOLVING DEATH, PERSONAL INJURY, OR DAMAGE TO A VEHICLE; CLARIFYING THE DRIVER'S DUTY TO PROVIDE CERTAIN INFORMATION AND RENDER AID; CLARIFYING THE PENALTIES FOR CERTAIN VIOLATIONS INVOLVING THE INJURY, SERIOUS BODILY INJURY, OR DEATH OF A PERSON OR THE STRIKING OF THE BODY OF A DECEASED PERSON; AMENDING SECTIONS 61-5-405, 61-7-101, 61-7-103, 61-7-105, 61-7-108, AND 61-7-118, MCA; AND REPEALING SECTION 61-7-104, MCA 883

236 *(Senate Bill No. 120; Brenden)* REQUIRING THAT CERTAIN INFORMATION ABOUT MEMBERS OF STATE AGENCY BOARDS, COMMITTEES, COMMISSIONS, AND ADVISORY COUNCILS BE PROVIDED FOR PUBLICATION IN OFFICIAL REPORTS AND BE PROVIDED ON WEBSITES; AND PROVIDING AN EFFECTIVE DATE 886

237 *(Senate Bill No. 278; Mowbray)* PROVIDING FOR MEMBERSHIP SUBSCRIPTIONS FOR PRIVATE AIR AMBULANCE SERVICE; EXEMPTING CERTAIN PRIVATE AIR AMBULANCE SERVICES FROM INSURANCE LAWS; AMENDING SECTION 33-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 887

238 *(Senate Bill No. 337; Blewett)* REVISING PROBATE LAWS REGARDING PLEADINGS, EVIDENCE, AND SUPERVISED ADMINISTRATION; PROVIDING PROVISIONS RELATED TO UNSWORN STATEMENTS; REVISING PROVISIONS RELATED TO THE VERIFICATION OF PLEADINGS; REQUIRING THAT AN AFFIDAVIT OR VERIFIED PETITION BE ACCEPTED AS EVIDENCE IN AN UNCONTESTED PROBATE OR TRUST PROCEEDING; REQUIRING PLEADINGS IN PROBATE PROCEEDINGS TO BE SIGNED BY AN ATTORNEY; REQUIRING THAT GUARDIANS, PERSONAL REPRESENTATIVES, AND CONSERVATORS ACKNOWLEDGE FIDUCIARY RESPONSIBILITIES; PROVIDING FOR PRESUMPTIVE ENTITLEMENT OF SUPERVISED ADMINISTRATION UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 1-1-203, 25-4-203, 72-1-206, AND 72-3-401, MCA 889

239 *(Senate Bill No. 352; Steinbeisser)* ALLOWING SPECIAL RISK CLASSIFICATIONS FOR PRIVATE PASSENGER AND COMMERCIAL AUTOMOBILE POLICIES TO BE BASED ON FAVORABLE AND ADVERSE INFORMATION CONTAINED IN AN EXPERIENCE RECORD; AND AMENDING SECTIONS 33-16-201 AND 33-18-210, MCA 893

240 *(House Bill No. 51; Barrett)* MODIFYING THE PROCEDURES FOR PAYMENT OF ENERGY COST SAVINGS FROM PROJECTS FUNDED FROM ENERGY CONSERVATION PROGRAM BONDS; CREATING A DEBT SERVICE ACCOUNT; AMENDING SECTIONS 90-4-605, 90-4-612, AND 90-4-614, MCA; AND PROVIDING AN EFFECTIVE DATE. 896

241 *(House Bill No. 83; Berry)* CREATING A PRESCRIPTION DRUG REGISTRY; PROVIDING DEFINITIONS; ESTABLISHING PRESCRIPTION DRUG REPORTING REQUIREMENTS; PROVIDING FOR THE USE OF PRESCRIPTION DRUG REGISTRY INFORMATION; PROVIDING FOR FEES TO FUND THE PROGRAM; ALLOWING SANCTIONS AND PENALTIES; PROVIDING FOR IMMUNITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 37-7-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 898

242 *(House Bill No. 91; Ingraham)* GENERALLY REVISING THE LAWS RELATING TO ELECTIONS; REVISING THE TIMELINE TO FILL VACANCIES IN THE STATE SENATE; REVISING PROCEDURES TO GIVE NOTICE OF SPECIAL ELECTIONS; REVISING PROCESSING AND RETENTION PROCEDURES FOR CERTAIN VOTER RECORDS; REVISING PROCEDURES FOR CANDIDATE NOMINATION AND WITHDRAWAL; REVISING REQUIREMENTS TO APPOINT ELECTION JUDGES WHO REPRESENT DIFFERENT PARTIES IN CERTAIN SITUATIONS; REVISING PROCEDURES RELATING TO VOTING BY ABSENTEE BALLOT; REVISING ELECTION RECOUNT PROCEDURES; AMENDING SECTIONS 5-2-406, 13-1-106, 13-1-108, 13-1-303, 13-1-304, 13-2-108, 13-2-110, 13-2-112, 13-2-115, 13-2-122, 13-2-220, 13-2-222, 13-2-304, 13-2-511, 13-2-512, 13-3-105, 13-4-102, 13-4-207, 13-10-201, 13-10-203, 13-10-209, 13-10-211, 13-10-325, 13-10-404, 13-10-405, 13-12-202, 13-12-203, 13-12-207, 13-13-111, 13-13-112, 13-13-113, 13-13-114, 13-13-116, 13-13-118, 13-13-119, 13-13-201, 13-13-211, 13-13-212, 13-13-214, 13-13-222, 13-13-225, 13-13-241, 13-13-301, 13-13-602, 13-14-115, 13-14-117, 13-14-118, 13-14-212, 13-15-101, 13-15-107, 13-15-108, 13-15-112, 13-15-205, 13-15-206, 13-15-402, 13-15-404, 13-15-506, 13-16-201, 13-16-412, 13-16-419, 13-17-203, 13-17-503, 13-19-102, 13-19-106, 13-19-206, 13-19-301, 13-19-306, 13-19-307, 13-19-308, 13-19-309, 13-19-310, 13-19-311, 13-19-313, 13-25-101, AND 13-38-201, MCA; REPEALING

SECTIONS 13-2-123, 13-13-231, AND 13-21-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 906

243 *(House Bill No. 107; Hollenbaugh)* CLARIFYING THE OBLIGATION TO PAY ROYALTIES TO THE STATE UNDER COAL LEASE CONTRACTS; REQUIRING THAT THE PAYMENT OF ROYALTIES ON A COAL LEASE BE OF THE ESSENCE IN A LEASE CONTRACT; REQUIRING THAT INTEREST BE PAID ON DELINQUENT COAL ROYALTY PAYMENTS; PROVIDING FOR AN AUDIT, AFTER NOTICE, OF COAL ROYALTIES PAID TO THE STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 943

244 *(House Bill No. 166; Esp)* GENERALLY REVISING WEED CONTROL LAWS; REQUIRING COUNTY APPROVAL OF WEED MANAGEMENT PLANS; CLARIFYING DUTY OF A PROPERTY OWNER TO INFORM THE OWNER'S AGENT AND THE PURCHASER OF WEED INFESTATIONS AND MANAGEMENT; REVISING FUNDING OPTIONS; AMENDING SECTIONS 7-4-2711, 7-22-2103, 7-22-2109, 7-22-2116, 7-22-2120, 7-22-2121, 7-22-2126, 7-22-2141, 7-22-2142, 7-22-2153, AND 80-7-814, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 945

245 *(House Bill No. 196; Connell)* ALLOWING THE DEPARTMENT OF COMMERCE TO REVIEW, ANALYZE, AND COMMENT ON BEHALF OF LOCAL GOVERNMENTS REGARDING SIGNIFICANT FEDERAL LAND MANAGEMENT PROPOSALS; PROVIDING FOR RULEMAKING; AND ESTABLISHING ADVOCACY ON BEHALF OF LOCAL GOVERNMENTS AS A FUNCTION OF THE DEPARTMENT OF COMMERCE REGARDING FEDERAL LAND MANAGEMENT PROPOSALS 952

246 *(House Bill No. 216; Miller)* REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES FOR HARDSHIP LICENSES THAT ALLOW PERMITHOLDERS 14 YEARS OF AGE OR OLDER TO OPERATE A MOTOR VEHICLE TO OR FROM A SCHOOL BUS STOP WITHOUT A PARENT OR LEGAL GUARDIAN; REVISING THE DEPARTMENT'S RULEMAKING AUTHORITY; AND AMENDING SECTION 61-5-125, MCA 954

247 *(House Bill No. 277; Washburn)* ALLOWING A LOCAL GOVERNMENT TO AUTHORIZE THE USE OF GOLF CARTS ON PUBLIC STREETS OR HIGHWAYS; DEFINING "GOLF CART"; REQUIRING REGISTRATION OF CERTAIN GOLF CARTS; AMENDING SECTIONS 10-3-1307, 23-1-105, 61-1-101, 61-3-312, 61-3-321, 61-3-332, 61-6-158, AND 61-12-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 955

248 *(House Bill No. 291; Sesso)* PROVIDING A REFUND TO CERTAIN CUSTOMERS WHO PAY FOR THE EXTENSION OF A UTILITY LINE TO A RESIDENTIAL STRUCTURE IF ADDITIONAL CUSTOMERS CONNECT TO THE EXTENSION; REQUIRING EACH ADDITIONAL CUSTOMER TO ADVANCE TO THE ELECTRIC UTILITY AN EQUAL PROPORTIONATE SHARE OF THE TOTAL AMOUNT PAID FOR THE EXTENSION; REQUIRING A REFUND OF THE ADVANCE ON A PRO RATA BASIS; PROHIBITING A SMALL CUSTOMER FROM RECEIVING A REFUND GREATER THAN THE CUSTOMER'S PROPORTIONATE SHARE OF THE COSTS; LIMITING THE REFUND TO A CERTAIN PERIOD OF TIME; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 975

249 *(House Bill No. 295; Cook)* GENERALLY REVISING WIND EASEMENTS AND WIND ENERGY RIGHTS; DEFINING WIND ENERGY RIGHTS AS PROPERTY RIGHTS; PROVIDING WIND ENERGY RIGHTS ARE APPURTENANT TO THE SURFACE ESTATE; PROVIDING FOR WIND

EASEMENTS; PROVIDING FOR WIND OPTION AGREEMENTS AND WIND ENERGY AGREEMENTS AND THEIR MINIMUM REQUIREMENTS; AFFIRMING THE DOMINANCE OF A MINERAL ESTATE; AMENDING SECTION 70-17-203, MCA; REPEALING SECTION 70-17-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 976

250 *(House Bill No. 336; Menahan)* REVISING PENALTIES FOR THE WASTE OF GAME ANIMALS, GAME FISH, GAME BIRDS, AND FUR-BEARING ANIMALS; REQUIRING FORFEITURE OF PRIVILEGES AND PAYMENT OF RESTITUTION; AND AMENDING SECTIONS 87-1-111, 87-1-115, 87-3-102, AND 87-3-506, MCA 979

251 *(House Bill No. 411; Wilmer)* ALLOWING THE DEPARTMENT OF ADMINISTRATION TO AUTHORIZE THE ACTUAL COST OF MEALS FOR CERTAIN FIREFIGHTERS IF THE COSTS EXCEED THE PRESCRIBED MAXIMUM STANDARD RATE PER MEAL; AMENDING SECTION 2-18-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 982

252 *(House Bill No. 522; Kary)* GENERALLY REVISING LAWS REGARDING THE LOCAL REGULATION OF SUBDIVISIONS; AUTHORIZING A GOVERNING BODY TO EXTEND THE APPROVAL OF A SUBDIVISION APPLICATION AND PRELIMINARY PLAT FOR A MUTUALLY AGREED-UPON PERIOD OF TIME; REQUIRING THE AGREEMENT FOR THE EXTENSION TO BE IN WRITING; PROVIDING THAT A GOVERNING BODY MAY ISSUE MORE THAN ONE EXTENSION; AND AMENDING SECTION 76-3-610 983

253 *(House Bill No. 538; Peterson)* ALLOWING LOCAL GOVERNMENT BONDS TO BE SOLD AT PUBLIC OR PRIVATE SALE; ESTABLISHING A MINIMUM SALE PRICE; AMENDING SECTIONS 7-7-2212, 7-7-2238, 7-7-2251, 7-7-2252, 7-7-2254, 7-7-4211, 7-7-4236, 7-7-4251, 7-7-4252, 7-7-4254, 7-7-4433, 7-7-4434, 7-10-220, 7-10-221, 7-12-2172, 7-12-4204, 7-14-4652, 7-15-4507, 7-31-113, 20-9-429, 20-9-430, 20-9-431, 20-9-432, 85-7-1436, 85-7-1437, 85-7-2022, 85-7-2023, 85-7-2033, 85-8-503, AND 85-9-625, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 984

254 *(House Bill No. 541; Welborn)* PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM REGULATING DOMESTIC LIVESTOCK TRAILING AS A COMMERCIAL ACTIVITY; EXEMPTING DOMESTIC LIVESTOCK TRAILING FROM THE MONTANA ENVIRONMENTAL POLICY ACT; AUTHORIZING DOMESTIC LIVESTOCK TRAILING ACROSS LANDS DESIGNATED AS WILDLIFE MANAGEMENT AREAS; AMENDING SECTIONS 87-1-301 AND 87-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 995

255 *(House Bill No. 552; Hale)* REVISING WORKERS' COMPENSATION LAWS RELATED TO CERTAIN PUBLIC SAFETY VOLUNTEERS; ALLOWING LEVIES USED TO FUND PUBLIC SAFETY VOLUNTEERS' DISABILITY INCOME INSURANCE TO BE USED ALTERNATIVELY FOR WORKERS' COMPENSATION COVERAGE; PROVIDING COVERAGE FOR VOLUNTEER EMERGENCY MEDICAL SERVICE PROVIDERS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 7-6-621, 7-33-2109, 7-33-2209, 7-33-2403, 7-33-4109, 7-33-4111, 7-34-102, 39-71-118, AND 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE 998

256 *(House Bill No. 602; McNutt)* ESTABLISHING A PROCESS FOR THE LEGISLATURE TO PROVIDE DIRECTION FOR THE IMPLEMENTATION OF EXEMPT WELL LAWS; REQUIRING AN

INTERIM STUDY OF ISSUES RELATED TO GROUND WATER WELLS EXEMPT FROM PERMITTING; TEMPORARILY PROHIBITING RULEMAKING FOR WELLS EXEMPT FROM PERMITTING; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1007

257 *(Senate Bill No. 30; Wanzenried)* REVISING THE COLLECTION REQUIREMENTS UNDER THE STATE SUPERFUND LAWS; REQUIRING LIABLE PARTIES TO PAY INTEREST IF MONTHLY BILLS FOR REMEDIAL ACTION COSTS ARE NOT PAID WITHIN 30 DAYS; AMENDING SECTION 75-10-722, MCA; AND PROVIDING AN EFFECTIVE DATE 1009

258 *(Senate Bill No. 124; Ripley)* REORGANIZING AND RECODIFYING FISH AND GAME CODE CRIMINAL STATUTES AND DEFINITIONS; CLARIFYING PENALTIES; AMENDING SECTIONS 45-6-101, 45-6-203, 81-2-121, 87-1-120, 87-1-232, 87-1-234, 87-1-601, 87-1-803, 87-1-804, 87-2-101, 87-2-104, 87-2-106, 87-2-202, 87-2-411, 87-2-521, 87-2-807, 87-3-110, 87-3-121, 87-3-126, 87-3-204, 87-3-221, 87-3-222, 87-3-224, 87-3-403, 87-4-201, 87-4-306, 87-4-407, 87-4-427, 87-4-601, 87-4-609, 87-4-803, 87-4-807, 87-4-903, 87-4-915, 87-4-1002, 87-5-204, 87-5-703, AND 87-5-721, MCA; AND REPEALING SECTIONS 87-1-102, 87-1-108, 87-1-109, 87-1-110, 87-1-111, 87-1-112, 87-1-113, 87-1-114, 87-1-115, 87-1-121, 87-1-125, 87-1-208, 87-1-231, 87-2-103, 87-2-109, 87-2-110, 87-2-112, 87-2-114, 87-2-120, 87-2-203, 87-2-205, 87-2-509, 87-2-604, 87-2-804, 87-3-101, 87-3-102, 87-3-103, 87-3-104, 87-3-105, 87-3-107, 87-3-108, 87-3-109, 87-3-111, 87-3-112, 87-3-116, 87-3-117, 87-3-118, 87-3-123, 87-3-124, 87-3-125, 87-3-130, 87-3-134, 87-3-135, 87-3-141, 87-3-142, 87-3-143, 87-3-144, 87-3-205, 87-3-206, 87-3-207, 87-3-209, 87-3-301, 87-3-302, 87-3-304, 87-3-305, 87-3-306, 87-3-307, 87-3-401, 87-3-402, 87-3-404, 87-3-405, 87-3-501, 87-3-503, 87-3-504, 87-3-505, 87-3-506, 87-3-507, 87-4-608, AND 87-4-1014, MCA 1010

259 *(Senate Bill No. 146; Lake)* DECLARING THAT CERTAIN TRANSFER FEE COVENANTS DO NOT RUN WITH THE TITLE TO REAL PROPERTY AND ARE UNENFORCEABLE AT LAW OR IN EQUITY AGAINST A SUBSEQUENT OWNER, PURCHASER, OR MORTGAGEE OF REAL PROPERTY AS A COVENANT, AN EQUITABLE SERVITUDE, OR OTHERWISE; DECLARING THAT A LIEN FILED AGAINST REAL PROPERTY TO ENFORCE THE PAYMENT OF A TRANSFER FEE IS VOID AND UNENFORCEABLE; AMENDING SECTION 70-17-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1078

260 *(Senate Bill No. 218; Steinbeisser)* ESTABLISHING PROCEDURES FOR SAMPLING PLANTS PROTECTED BY PATENT OR OTHER INTELLECTUAL PROPERTY LAWS; ALLOWING CONFIDENTIALITY; REQUIRING MEDIATION OF CLAIMS INVOLVING PROTECTED PLANTS; PROVIDING AN EXCEPTION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1080

261 *(Senate Bill No. 219; Branae)* REVISING THE PROVISIONS RELATED TO ACCESS TO PROTESTED PROPERTY TAXES; REVISING THE PROVISIONS RELATED TO A SCHOOL DISTRICT'S ELECTION ON WHETHER TO WAIVE THE DISTRICT'S RIGHT TO RECEIVE ITS PORTION OF THE PROTESTED TAXES UPON SETTLEMENT OF THE TAX PROTEST; PROVIDING THAT THE ELECTION APPLIES ONLY TO CENTRALLY ASSESSED PROPERTY AND INDUSTRIAL PROPERTY THAT IS ASSESSED ANNUALLY BY THE DEPARTMENT; ALLOWING LOCAL TAXING JURISDICTIONS TO ACCESS PROTESTED TAXES OF CENTRALLY ASSESSED INDUSTRIAL PROPERTY; REVISING THE

CALCULATION OF GUARANTEED TAX BASE AID FOR A DISTRICT THAT ELECTS TO WAIVE ITS RIGHT TO RECEIVE ITS PORTION OF CENTRALLY ASSESSED PROTESTED TAXES; AMENDING SECTIONS 15-1-402, 15-1-409, AND 20-9-366, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES. 1083

262 *(Senate Bill No. 242; Brenden)* REVISING WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF "EMPLOYEE" WITH RESPECT TO AGRICULTURE EMPLOYMENT; AMENDING SECTION 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE 1088

263 *(Senate Bill No. 246; Olson)* CLARIFYING THE PETITION PROCESS OF A REGULATED TELECOMMUNICATION SERVICES PROVIDER FOR SUBMITTING A PLAN FOR AN ALTERNATIVE FORM OF REGULATION; ELIMINATING CERTAIN REQUIREMENTS ASSOCIATED WITH A PROPOSED ORDER MODIFYING A PLAN FOR AN ALTERNATIVE FORM OF REGULATION; AMENDING SECTION 69-3-809, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1092

264 *(Senate Bill No. 285; Olson)* REQUIRING THE MONITORING OF CARBON DIOXIDE INJECTION WELLS FOR 50 YEARS UNLESS AN ALTERNATIVE TIMEFRAME IS APPROVED BY THE BOARD OF OIL AND GAS CONSERVATION; REQUIRING AN OPERATOR TO CONTINUE TO ACCEPT LIABILITY FOR A CARBON DIOXIDE STORAGE RESERVOIR AND THE STORED CARBON FOR A MINIMUM OF 30 YEARS; AMENDING SECTION 82-11-183, MCA; AND PROVIDING AN EFFECTIVE DATE. 1094

265 *(Senate Bill No. 288; Gillan)* ALLOWING ASSESSMENTS OF A SPECIAL DISTRICT TO BE APPEALED TO THE ADMINISTRATIVE BOARD OF THE DISTRICT; AND AMENDING SECTION 7-11-1027, MCA 1096

266 *(Senate Bill No. 357; Hamlett)* PROHIBITING A RESIGNING MEMBER OF A BOARD OF COUNTY COMMISSIONERS FROM PARTICIPATING IN FILLING THE VACANCY TO BE CREATED BY THE RESIGNATION; AMENDING SECTIONS 2-16-501 AND 7-4-2106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1097

267 *(Senate Bill No. 367; Vincent)* AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE INDIVIDUAL, GENERAL, AND ALTERNATIVE NUTRIENT STANDARDS VARIANCES TO ESTABLISH PERMIT LIMITS FOR POINT SOURCE DISCHARGES TO SURFACE WATER; ALLOWING INFORMATION RELATED TO BASE NUMERIC NUTRIENT STANDARDS OR NUTRIENT STANDARDS VARIANCES TO BE CONFIDENTIAL; AND AMENDING SECTIONS 75-5-103, 75-5-105, AND 75-5-313, MCA. 1100

268 *(Senate Bill No. 374; Olson)* REVISING LAWS RELATED TO CANDIDATES FOR PRECINCT COMMITTEE REPRESENTATIVES OF EACH PARTY; CLARIFYING THE PROCESS FOR FILLING A VACANCY IN A PRECINCT COMMITTEE POSITION; AND AMENDING SECTION 13-38-201, MCA 1111

269 *(Senate Bill No. 413; Balyeat)* CLARIFYING THE DUE DATE OF INDIVIDUAL INCOME TAX RETURNS AND CORPORATION LICENSE OR INCOME TAX RETURNS WHEN THE DUE DATE OF THE RETURN FALLS ON CERTAIN FEDERAL HOLIDAYS OR FEDERALLY DECLARED DISASTERS NOT OBSERVED IN MONTANA; AMENDING SECTIONS 15-30-2504, 15-30-2512, 15-30-2604, 15-30-3302, 15-31-101, 15-31-111, 15-31-141, AND 15-31-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1112

270 *(House Bill No. 188; Loney)* GENERALLY REVISING LAWS GOVERNING REAL ESTATE APPRAISERS; REVISING DEFINITIONS; PROVIDING FOR REGULATION OF APPRAISAL MANAGEMENT COMPANIES; GOVERNING RELATIONSHIPS BETWEEN APPRAISAL MANAGEMENT COMPANIES AND APPRAISERS; EXPANDING RULEMAKING AUTHORITY OF THE BOARD OF REAL ESTATE APPRAISERS; AND AMENDING SECTIONS 37-54-102 AND 37-54-105, MCA. 1121

271 *(House Bill No. 327; McClafferty)* REVISING SCHOOL ADMINISTRATION LAWS; ESTABLISHING A WITHDRAWAL DATE FOR SCHOOL DISTRICT TRUSTEE ELECTIONS; PROVIDING WHO MAY ADMINISTER AN OATH OF OFFICE TO A SCHOOL DISTRICT TRUSTEE; CLARIFYING THE STATUS OF A SINGLE-MEMBER TRUSTEE DISTRICT AND A TRUSTEE NOMINATING DISTRICT IN AN ELECTION BY ACCLAMATION; REQUIRING TRUSTEES OF EACH DISTRICT TO ORGANIZE AS A GOVERNING BOARD NO LATER THAN 15 DAYS AFTER ELECTION DAY; CLARIFYING THE CALCULATION OF MAXIMUM ALLOWABLE INDEBTEDNESS FOR CERTAIN SCHOOL DISTRICTS; ELIMINATING REFERENCE TO AN INTEREST RATE ON SCHOOL DISTRICT BOND ELECTION BALLOTS; AMENDING SECTIONS 20-3-305, 20-3-307, 20-3-313, 20-3-321, 20-9-406, 20-9-426, 20-9-427, AND 20-9-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1129

272 *(Senate Bill No. 135; Balyeat)* AUTHORIZING THE USE OF CONTROLLED DOGS TO TRACK WOUNDED GAME ANIMALS; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1134

273 *(Senate Bill No. 138; Jones)* RESTRICTING THE STATUTORY APPROPRIATION FROM THE GENERAL FUND FOR THE BOARD OF REGENTS' SHARE OF THE OPTIONAL RETIREMENT TO EMPLOYEES WHOSE COMPENSATION IS PAID FROM THE CURRENT UNRESTRICTED SUBFUND; AMENDING SECTION 19-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE 1135

274 *(Senate Bill No. 149; Essmann)* CREATING THE OFFENSE OF PREDATORY LOITERING APPLICABLE TO PERSONS PREVIOUSLY CONVICTED OF A SEXUAL OFFENSE; AND PROVIDING A PENALTY 1136

275 *(Senate Bill No. 327; Larsen)* REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REPORT TO THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE AND THE WATER POLICY INTERIM COMMITTEE ON FEASIBILITY STUDIES CURRENTLY REQUIRED UNDER LAW TO ASSESS WATER PROJECTS OWNED OR CONTROLLED BY THE STATE FOR ELECTRICITY GENERATION POTENTIAL; CLARIFYING THE ECONOMIC FEASIBILITY CRITERIA THAT THE DEPARTMENT IS REQUIRED TO CONSIDER IN STUDYING PROJECTS; AMENDING SECTION 85-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1137

276 *(Senate Bill No. 382; Gillan)* REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE CERTAIN INFORMATION CONCERNING CENTRALLY ASSESSED PROPERTY TO TAXPAYERS 1138

277 *(Senate Bill No. 389; Van Dyk)* ALLOWING A BREWERY TO IMPORT OR PURCHASE NECESSARY NONBEVERAGE INGREDIENTS CONTAINING ALCOHOL AS INGREDIENTS FOR BLENDING OR MANUFACTURING PURPOSES; REQUIRING THE DEPARTMENT OF REVENUE TO ESTABLISH CONDITIONS FOR THE IMPORTATION OR

PURCHASE; PROVIDING THAT THE NONBEVERAGE INGREDIENTS FOR USE BY A BREWERY AND DISTILLED SPIRIT INGREDIENTS FOR A DISTILLERY OR A MICRODISTILLERY ARE EXEMPT FROM STATE TAXES AND MARKUP; DECREASING THE MINIMUM ALCOHOL CONTENT APPLICABLE TO DISTILLERIES; AND AMENDING SECTIONS 16-1-401, 16-1-404, 16-3-214, AND 16-4-311, MCA. 1139

278 *(House Bill No. 618; Pease-Lopez)* ESTABLISHING PROPERTY TAX EXEMPTIONS FOR CERTAIN PROPERTY OWNED BY FEDERALLY RECOGNIZED INDIAN TRIBES; AMENDING SECTIONS 15-6-201, 41-3-201, 61-3-321, AND 61-10-214, MCA; AND PROVIDING AN APPLICABILITY DATE 1142

279 *(Senate Bill No. 59; Moss)* PROVIDING FOR A MURAL THAT HONORS THE HISTORY OF MONTANA WOMEN AS COMMUNITY BUILDERS; AMENDING SECTION 2-17-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1150

280 *(Senate Bill No. 319; Essmann)* REVISING CHILD SAFETY RESTRAINT STANDARDS; WAIVING THE FINE FOR VIOLATION OF THE CHILD RESTRAINT REQUIREMENT UNDER CERTAIN CONDITIONS; ELIMINATING THE SECONDARY ENFORCEMENT RESTRICTION FOR CERTAIN RESTRAINT VIOLATIONS; AMENDING SECTIONS 61-9-420, 61-9-423, AND 61-13-103, MCA; AND PROVIDING AN EFFECTIVE DATE 1152

281 *(House Bill No. 3; Mehlhoff)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1154

282 *(Senate Bill No. 15; Jent)* ESTABLISHING THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE; PROVIDING PENALTIES; AMENDING SECTIONS 61-8-101, 61-8-402, 61-8-404, 61-8-409, 61-8-714, 61-8-722, 61-8-731, AND 61-8-734, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 1154

283 *(Senate Bill No. 42; Shockley)* REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, 61-8-405, AND 61-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1163

284 *(Senate Bill No. 238; Blewett)* INCREASING JURISDICTIONAL LIMITS FOR JUSTICES' COURTS, CITY COURTS, AND SMALL CLAIMS COURTS; AMENDING SECTIONS 3-10-301, 3-10-1004, 3-11-103, 7-1-4151, 25-35-502, 25-35-503, 25-35-606, AND 75-7-123, MCA; AND PROVIDING AN EFFECTIVE DATE. 1167

285 *(Senate Bill No. 333; Shockley)* CONFORMING MONTANA LAW TO THE 2008 AMENDMENTS TO THE UNIFORM PRINCIPAL AND INCOME ACT; CHANGING THE MARITAL DEDUCTION REQUIREMENTS TO ALLOW A TRUST TO QUALIFY FOR THE FEDERAL MARITAL DEDUCTION REQUIREMENTS; PROVIDING FOR THE ALLOCATION OF TAXABLE INCOME FOR THE DETERMINATION OF TAXES ON UNDISTRIBUTED ENTITY TAXABLE INCOME; PROVIDING A

TRANSITION PROVISION; AMENDING SECTIONS 72-34-441 AND 72-34-452, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . 1172

286 *(Senate Bill No. 347; Lake)* REQUIRING NOTICE OF PROPOSED AGENCY PRIVATE PROPERTY ASSESSMENTS TO THE PUBLIC AND INTERESTED PERSONS THROUGH E-MAIL AND POSTAL MAILING LISTS AND A WEBSITE; AND ALLOWING CIVIL ACTION TO VOID A PROPOSED AGENCY ACTION FOR FAILURE TO PROVIDE REQUIRED NOTICE 1174

287 *(Senate Bill No. 385; Caferro)* GENERALLY REVISING THE MONTANA PARENTS AS SCHOLARS PROGRAM; CLARIFYING THE FUNDING SOURCE FOR THE PROGRAM; CLARIFYING REPORTING REQUIREMENTS FOR THE PROGRAM; AMENDING SECTION 53-4-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1175

288 *(Senate Bill No. 412; Augare)* PROVIDING A TEMPORARY TAX EXEMPTION FOR PROPERTY OWNED BY A FEDERALLY RECOGNIZED MONTANA INDIAN TRIBE WHEN THE PROPERTY HAS A FEDERAL TRUST APPLICATION PENDING; PROVIDING THAT EXISTING TAX LIENS ARE NOT EXTINGUISHED; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING A DELAYED EFFECTIVE DATE 1177

289 *(Senate Bill No. 420; Gallus)* PROVIDING PENALTIES FOR DELINQUENT FILING OF REQUIRED AUDITS AND REPORTS BY A LOCAL GOVERNMENT ENTITY TO THE DEPARTMENT OF ADMINISTRATION; REQUIRING THE DEPARTMENT TO ADOPT RULES ESTABLISHING A FINE; ALLOWING THE DEPARTMENT TO WAIVE THE PENALTIES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-7-503 AND 2-7-517, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1178

290 *(House Bill No. 265; Vance)* PROVIDING THAT AN INSURANCE COMPANY MAY NOT UNILATERALLY DISREGARD A REPAIR OPERATION OR COST IDENTIFIED BY AN ESTIMATING SYSTEM THAT THE INSURER AND AN AUTOMOBILE BODY REPAIR BUSINESS OR LOCATION HAVE AGREED TO UTILIZE IN DETERMINING THE COST OF REPAIR; AND AMENDING SECTION 33-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1180

291 *(House Bill No. 416; Klock)* PROVIDING FOR QUALITY ASSURANCE ACTIVITIES BY MEDICAL PRACTICE GROUPS; PROVIDING FOR CONFIDENTIALITY OF THE PROCEEDINGS OF QUALITY ASSURANCE COMMITTEES; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1182

292 *(House Bill No. 172; Washburn)* REVISING LAWS RELATED TO THE HUNTING OF GRIZZLY BEARS; AMENDING SECTIONS 87-1-304, 87-2-701, 87-5-301, AND 87-5-302, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1186

293 *(Senate Bill No. 1; Tutvedt)* REQUIRING RECALCULATION OF THE AMOUNT ASSESSABLE TO EACH LOT, TRACT, OR PARCEL IN A SPECIAL IMPROVEMENT DISTRICT OR RURAL SPECIAL IMPROVEMENT DISTRICT IF THE NUMBER OF LOTS, TRACTS, OR PARCELS INCREASES; REQUIRING NOTICE OF POSSIBLE RECALCULATIONS DURING THE CREATION OF THE DISTRICT; AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2151, 7-12-4104, 7-12-4106, 7-12-4161, AND 7-12-4162, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1188

294 *(Senate Bill No. 16; Brown)* REQUIRING A PERSON CONDUCTING SIMULCAST RACING THROUGH A SIMULCAST PARIMUTUEL NETWORK TO ENTER INTO A CONTRACT WITH THE BOARD OF HORSERACING; PROVIDING THAT A PERSON CONDUCTING SIMULCAST RACING WITHOUT A CONTRACT IS GUILTY OF A MISDEMEANOR; AUTHORIZING THE BOARD OF HORSERACING TO ACT AS A SIMULCAST PARIMUTUEL NETWORK PROVIDER WITH RESPECT TO SIMULCAST RACES; APPROPRIATING CERTAIN FUNDS TO THE BOARD OF HORSERACING; AMENDING SECTIONS 23-4-101, 23-4-105, 23-4-201, AND 23-4-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1193

295 *(Senate Bill No. 75; Sonju)* ALLOWING THE DEPARTMENT OF REVENUE TO ESTABLISH ALTERNATIVE OFFICE HOURS; AMENDING SECTION 2-16-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1197

296 *(Senate Bill No. 81; Wanzenried)* REVISING COMMERCIAL DRIVER LICENSING LAWS TO CONFORM TO CHANGES IN FEDERAL MOTOR VEHICLE SAFETY ADMINISTRATION REGULATIONS; CREATING RECORDKEEPING REQUIREMENTS FOR MEDICAL CERTIFICATE EXPIRATION DATES AND INFORMATION FOR CERTAIN COMMERCIAL DRIVERS; AUTHORIZING LICENSE DOWNGRADE IN CERTAIN CIRCUMSTANCES; REVISING CERTAIN LICENSE SUSPENSION PROVISIONS; AMENDING SECTIONS 61-1-101, 61-5-112, 61-5-221, 61-8-102, 61-8-801, 61-8-803, 61-8-812, 61-11-102, AND 61-11-105, MCA; AND PROVIDING EFFECTIVE DATES 1197

297 *(Senate Bill No. 87; Steinbeisser)* AUTHORIZING FORGIVENESS OF LOAN PRINCIPAL AND EXPENDITURE OF FUNDS TO MEET OTHER FEDERAL INCENTIVES, CONDITIONS, AND REQUIREMENTS IN THE WATER POLLUTION CONTROL AND DRINKING WATER STATE REVOLVING FUNDS; AMENDING SECTIONS 75-5-1107 AND 75-6-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1217

298 *(Senate Bill No. 99; Brenden)* AUTHORIZING PAYMENT OF A COMMISSION TO LICENSE AGENTS WHO SELL TICKETS FOR CERTAIN HUNTING LICENSE LOTTERIES; AMENDING SECTIONS 87-1-271 AND 87-2-903, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1220

299 *(Senate Bill No. 173; Tutvedt)* CLARIFYING THAT NOISES RESULTING FROM SHOOTING ACTIVITIES AT SHOOTING RANGES MAY NOT BE CONSIDERED TO BE PUBLIC NUISANCES; AND AMENDING SECTION 27-30-101, MCA 1222

300 *(Senate Bill No. 195; Ripley)* REVISING LAWS RELATING TO THE MONTANA SEED LABORATORY; CREATING A SEED LABORATORY ADVISORY BOARD; ALLOWING THE LABORATORY TO DETERMINE APPROPRIATE FEES FOR THE COSTS OF SEED ANALYSIS; AMENDING SECTIONS 20-25-229, 80-5-126, 80-5-128, AND 80-5-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1222

301 *(Senate Bill No. 234; Sonju)* REVISING THE CONDITIONS UNDER WHICH A MUNICIPALITY MAY PROVIDE GARBAGE AND SOLID WASTE SERVICES; AMENDING SECTIONS 7-2-4736 AND 7-13-4107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1225

302 *(Senate Bill No. 267; Vincent)* ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY COMPLETE CERTAIN TOTAL MAXIMUM DAILY LOADS BY 2012 FOR THREATENED OR IMPAIRED WATER BODIES; REQUIRING REPORTING OF TOTAL MAXIMUM DAILY LOAD PROGRESS TO THE

ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING SECTION 75-5-703, MCA 1226

303 *(Senate Bill No. 296; Tutvedt)* INCREASING THE CIVIL PENALTY FOR VIOLATION OF THE MONTANA QUARANTINE AND PEST MANAGEMENT ACT; AMENDING SECTION 80-7-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1228

304 *(Senate Bill No. 311; Gallus)* CLARIFYING THE TERMS OF OFFICE AND YEARS SERVED FOR OFFICIALS ELECTED TO AND CANDIDATES SEEKING NOMINATION FOR OFFICES THAT ARE CONSTITUTIONALLY TERM-LIMITED; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTION 13-10-201, MCA. 1228

305 *(Senate Bill No. 340; Vincent)* CLARIFYING COUNTY ENFORCEMENT RELATED TO A PERSON, ENTITY, OR REPRESENTATIVE OF A PERSON OR ENTITY THAT HAS ENTERED INTO A FIRE HAZARD REDUCTION AGREEMENT; AMENDING SECTION 7-33-2205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1230

306 *(Senate Bill No. 376; Lake)* EXTENDING THE MATURITY DATE TIME LIMIT ON CERTAIN UNITED STATES TREASURY BILLS, NOTES, AND BONDS USED AS SECURITY FOR SCHOOL DISTRICT CONSTRUCTION BONDS; AMENDING SECTION 7-6-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1231

307 *(House Bill No. 627; Bennett)* REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR A JUDICIAL WAIVER OF NOTIFICATION; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATING TO PARENTAL NOTIFICATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-201, 50-20-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211, 50-20-212, AND 50-20-215, MCA; AND PROVIDING AN EFFECTIVE DATE. 1232

308 *(House Bill No. 638; Howard)* DENYING CERTAIN STATE-FUNDED SERVICES TO ILLEGAL ALIENS; ESTABLISHING PROCEDURES FOR DETERMINING A PERSON'S CITIZENSHIP STATUS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1238

309 *(Senate Bill No. 172; Lake)* CLASSIFYING CERTAIN ENERGY STORAGE FACILITIES AS CLASS FOURTEEN PROPERTY; EXEMPTING CLASS FOURTEEN ENERGY STORAGE FACILITIES FROM THE PROVISIONS OF THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, 75-20-104, AND 75-20-201, MCA; AND PROVIDING AN APPLICABILITY DATE 1239

310 *(Senate Bill No. 418; Wittich)* PROHIBITING THE STATE OR FEDERAL GOVERNMENT FROM MANDATING THE PURCHASE OF HEALTH INSURANCE COVERAGE OR IMPOSING PENALTIES FOR DECISIONS RELATED TO THE PURCHASE OF HEALTH INSURANCE COVERAGE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE 1247

311 *(Senate Bill No. 426; Balyeat)* CREATING THE TREASURE STATE TAXPAYER DIVIDEND PROGRAM; ALLOWING TAXPAYERS A REFUND OF SURPLUS STATE GOVERNMENT FUND BALANCE THROUGH AN INCOME TAX CREDIT; AND PROVIDING THAT THE

TAX CREDIT IS BASED UPON THE RELATIVE AMOUNTS OF ALL PROPERTY TAXES PAID ON A CLAIMANT'S PRINCIPAL RESIDENCE AND UPON THE AMOUNT OF INDIVIDUAL INCOME TAXES THAT HAD BEEN PAID BY THE CLAIMANT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE 1248

312 *(House Bill No. 604; Cook)* PROVIDING FOR FUND TRANSFERS AND AN APPROPRIATION; AUTHORIZING FUND TRANSFERS FROM THE TELECOMMUNICATIONS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT ACCOUNT, THE OLDER MONTANANS TRUST FUND, AND THE FIRE SUPPRESSION ACCOUNT TO THE GENERAL FUND; AUTHORIZING FUND TRANSFERS FROM THE MOTOR VEHICLE AND RECYCLING ACCOUNT, THE ORPHAN SHARE ACCOUNT, THE COAL BED METHANE PROTECTION ACCOUNT, AND THE OIL AND GAS CONSERVATION ACCOUNT TO THE GUARANTEE ACCOUNT FOR DISTRIBUTION TO SCHOOL DISTRICTS; AUTHORIZING A FUND TRANSFER FROM THE OLDER MONTANANS TRUST FUND TO THE HEALTH AND MEDICAID INITIATIVES ACCOUNT; AUTHORIZING A FUND TRANSFER TO THE OLD FUND WORKERS' COMPENSATION ACCOUNT FROM THE GENERAL FUND AND THE OLD FUND LIABILITY ACCOUNT; REVISING THE TRANSFER TO THE RESEARCH AND COMMERCIALIZATION STATE SPECIAL REVENUE ACCOUNT FOR FISCAL YEARS 2012 AND 2013; IMPOSING A PREMIUM FEE ON CERTAIN WORKERS' COMPENSATION POLICIES; CREATING A STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-35-108, 39-71-2352, 52-3-115, 53-19-310, 75-10-532, 75-10-743, 76-13-150, 76-15-904, AND 82-11-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND TERMINATION DATES 1250

313 *(House Bill No. 15; Schmidt)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO PUBLIC SCHOOL FACILITY PROJECTS THROUGH THE QUALITY SCHOOLS FACILITY GRANT PROGRAM; AUTHORIZING GRANTS FROM THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT IN THE STATE SPECIAL REVENUE FUND; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PLANNING GRANTS; AND PROVIDING AN EFFECTIVE DATE. 1262

314 *(House Bill No. 29; McNiven)* INCLUDING MILITARY SERVICE OVERSEAS AS AN EXTRAORDINARY EVENT TO BE CONSIDERED FOR UNDERWRITING OR RATING EXCEPTIONS IN REGARD TO CREDIT REPORTS; AMENDING SECTION 33-18-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1264

315 *(House Bill No. 43; MacLaren)* CLARIFYING EMPLOYER RIGHTS RELATED TO WORKERS' COMPENSATION, DRUG TESTING, AND DISCIPLINARY ACTION INVOLVING AN EMPLOYEE'S MEDICAL USE OF MARIJUANA; EXPANDING THE TYPES OF EMPLOYEES COVERED BY THE WORKFORCE DRUG AND ALCOHOL TESTING ACT; CREATING EMPLOYMENT-RELATED EXCEPTIONS TO THE PROTECTIONS OF THE MEDICAL MARIJUANA ACT; PROVIDING DEFINITIONS; AMENDING SECTIONS 39-2-206, 39-2-210, 39-2-313, 39-71-407, 50-46-201, AND 50-46-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1266

316 *(House Bill No. 47; Peterson)* AUTHORIZING FISHING WITHOUT A LICENSE ON A SPECIFIC WEEKEND EACH YEAR; AMENDING SECTION 87-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1272

317 *(House Bill No. 90; McNutt)* GENERALLY REVISING MONTANA MORTGAGE LAWS; CHANGING THE NAME OF THE MONTANA MORTGAGE BROKER, MORTGAGE LENDER, AND MORTGAGE LOAN ORIGINATOR LICENSING ACT TO THE MONTANA MORTGAGE ACT; REVISING DEFINITIONS; DEFINING AND PROVIDING FOR THE LICENSING AND REGULATION OF MORTGAGE SERVICERS; REVISING THE MONTANA MORTGAGE ACT TO CONFORM TO FEDERAL LAW; REVISING APPLICATION AND LICENSING REQUIREMENTS; REDUCING THE REQUIRED HOURS FOR CONTINUING EDUCATION; REVISING RECORDKEEPING AND REPORTING REQUIREMENTS; REVISING BONDING REQUIREMENTS; REVISING DISCLOSURE REQUIREMENTS; PROHIBITING CERTAIN ACTS BY MORTGAGE LENDERS AND MORTGAGE SERVICERS; EXPANDING THE DEPARTMENT OF ADMINISTRATION'S RULEMAKING AUTHORITY; AMENDING SECTIONS 31-1-202, 32-5-102, 32-7-103, 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-106, 32-9-107, 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-118, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-128, 32-9-129, 32-9-130, 32-9-133, 32-9-145, 32-9-148, 32-9-150, 32-9-151, AND 32-9-160, MCA; AND REPEALING SECTIONS 32-9-114 AND 32-9-127, MCA 1274

318 *(House Bill No. 106; Lavin)* ESTABLISHING THE 24/7 SOBRIETY PROGRAM IN THE DEPARTMENT OF JUSTICE; PROVIDING FOR SOBRIETY TESTING BY COUNTY SHERIFFS OR DESIGNEES; PROVIDING FOR FEES, PROBATIONARY DRIVER LICENSES, ADMINISTRATIVE RULES, AND PENALTIES; EXPANDING THE PENALTIES FOR A THIRD OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE; AMENDING SECTIONS 45-7-309, 46-18-201, AND 61-5-208, MCA 1308

319 *(House Bill No. 111; Stahl)* IMPROVING STATE TAX ADMINISTRATION BY PROVIDING THAT 30% OF THE LODGING FACILITY USE TAX ATTRIBUTABLE TO EXPENDITURES BY STATE AGENCIES FOR IN-STATE LODGING BE DEPOSITED IN THE STATE GENERAL FUND; ELIMINATING THE REIMBURSEMENT OF LODGING FACILITY USE TAXES PAID FROM OTHER STATE FUNDS TO THE STATE GENERAL FUND; AMENDING SECTIONS 15-65-121 AND 15-65-131, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1315

320 *(House Bill No. 133; Salomon)* REVISING AND CLARIFYING THE PROCESSES AND REQUIREMENTS RELATING TO THE CONTROL OF NOXIOUS WEEDS; AUTHORIZING A WEED CONTROL BOARD TO SEEK A COURT ORDER TO MANAGE NOXIOUS WEEDS; PROVIDING FOR CIVIL PENALTIES FOR FAILURE TO CONTROL NOXIOUS WEEDS; PROVIDING FOR A LIEN ON PROPERTY FOR UNPAID CIVIL PENALTIES; AND AMENDING SECTIONS 7-22-2123, 7-22-2124, AND 7-22-2148, MCA 1316

321 *(House Bill No. 198; Peterson)* CLARIFYING A PUBLIC UTILITY'S POWER OF EMINENT DOMAIN; CLARIFYING THAT A PERSON ISSUED A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT HAS THE POWER OF EMINENT DOMAIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1320

322 *(House Bill No. 249; Fitzpatrick)* LIMITING THE PERSONAL LIABILITY OF A CORPORATE SHAREHOLDER FOR THE ACTS AND DEBTS OF THE CORPORATION; AND AMENDING SECTION 35-1-534, MCA. . . 1321

323 *(House Bill No. 262; Sands)* MAKING PERMANENT THE EMERGENCY MEDICAL SERVICE PROVIDERS GRANT PROGRAM; APPROPRIATING FUNDS; REPEALING SECTION 12, CHAPTER 437, LAWS OF 2009; AND PROVIDING EFFECTIVE DATES 1321

324 *(House Bill No. 296; Sesso)* RELATING TO THE SOUTHWESTERN MONTANA VETERANS' HOME; EXTENDING CIGARETTE TAX REVENUE CONTRIBUTIONS TO AN ACCOUNT FOR USE IN CONSTRUCTION OF THE SOUTHWESTERN MONTANA VETERANS' HOME; ESTABLISHING THE SOUTHWESTERN MONTANA VETERANS' HOME CAPITAL PROJECT; APPROPRIATING MONEY FOR A CAPITAL PROJECT; PROVIDING FOR OTHER MATTERS RELATED TO THE APPROPRIATION; AUTHORIZING CONSTRUCTION; PROVIDING CONDITIONS FOR A TRANSFER OF MONEY TO THE GENERAL FUND; AMENDING SECTION 16-11-119, MCA; AND PROVIDING EFFECTIVE DATES 1322

325 *(House Bill No. 297; Berry)* EXTENDING THE TIME FOR APPLYING FOR A HISTORIC RIGHT-OF-WAY ON STATE LANDS; AMENDING SECTION 77-1-130, MCA; AMENDING SECTION 5, CHAPTER 461, LAWS OF 1997, SECTION 6, CHAPTER 270, LAWS OF 2001, AND SECTIONS 2, 3, AND 4, CHAPTER 57, LAWS OF 2005; AND PROVIDING A TERMINATION DATE 1324

326 *(House Bill No. 370; Squires)* INCREASING THE OPTIONAL MOTOR VEHICLE REGISTRATION FEE FOR OPERATIONS AND MAINTENANCE AT STATE PARKS AND STATE-OWNED FACILITIES AT VIRGINIA CITY AND NEVADA CITY; REVISING THE OPTIONAL MOTOR VEHICLE REGISTRATION FEE PROCESS; AMENDING SECTIONS 23-1-105 AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1326

327 *(House Bill No. 409; Beck)* REVISING THE MEMBERSHIP OF THE COMMISSION ON PROVIDER RATES AND SERVICES; ALLOWING FOR APPOINTMENT OF TECHNICAL ADVISORS; AND AMENDING SECTION 53-10-203, MCA 1330

328 *(House Bill No. 458; Welborn)* GENERALLY REVISING LAWS RELATED TO OUTFITTING; ELIMINATING NET CLIENT HUNTER USE EXPANSION; REVISING BOARD OF OUTFITTER DUTIES REGARDING NET CLIENT HUNTER USE; ELIMINATING CERTAIN FEES; AMENDING SECTIONS 2-15-1773, 37-47-201, 37-47-316, AND 37-47-318, MCA; AND REPEALING SECTION 37-47-317, MCA 1332

329 *(House Bill No. 518; Hunter)* ALLOWING PEOPLE SUFFERING FROM MENTAL ILLNESS TO PREPARE A MENTAL HEALTH CARE ADVANCE DIRECTIVE DURING PERIODS OF MENTAL CAPACITY FOR USE DURING PERIODS OF MENTAL INCAPACITY; PROVIDING IMMUNITY FOR HEALTH CARE PROVIDERS AND INSTITUTIONS IN CERTAIN SITUATIONS; PROVIDING FOR JUDICIAL REVIEW; AMENDING SECTION 72-5-402, MCA; AND REPEALING SECTION 53-21-153, MCA 1335

330 *(House Bill No. 525; McNiven)* PROVIDING FOR SYSTEMATIC REVIEW OF PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS TO DETERMINE IF THE BOARD REMAINS NECESSARY FOR A PUBLIC PURPOSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1341

331 *(House Bill No. 530; Washburn)* ALLOWING ELECTION JUDGES TO BEGIN PREPARING ABSENTEE BALLOTS BEFORE ELECTION DAY; REQUIRING THE SECRETARY OF STATE TO ADOPT RULES GOVERNING SECURITY OF BALLOTS AND SECRECY OF VOTES; AND AMENDING SECTION 13-13-241, MCA 1342

332 *(House Bill No. 533; Berry)* GENERALLY REVISING STATE LAND MINE LEASING LAWS; CLARIFYING LIMITATIONS ON LEASING; CLARIFYING THE LEASING PROCEDURES FOR COAL MINING LEASES; ALLOWING THE BOARD OF LAND COMMISSIONERS THE DISCRETION IN DEMANDING A SURETY BOND; PROVIDING AN EXCEPTION TO THE DURATION OF A LEASE IF THE LEASE OR PERMIT IS CHALLENGED; DEFINING CERTAIN TERMS; ESTABLISHING TEMPORARY REPORTING REQUIREMENTS; CLARIFYING RENTAL TERMS; AMENDING SECTIONS 77-3-305, 77-3-312, 77-3-313, 77-3-314, AND 77-3-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1345

333 *(House Bill No. 543; Fitzpatrick)* REVISING THE LAW RELATING TO THE ADOPTION OF MATERIAL BY REFERENCE IN ADMINISTRATIVE RULES BY AGENCIES SUBJECT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 2-4-307, MCA; AND PROVIDING AN APPLICABILITY DATE 1347

334 *(House Bill No. 559; Esp)* PROVIDING THAT SMALL AND SEASONAL ESTABLISHMENTS SUCH AS GUEST RANCHES AND OUTFITTING AND GUIDE FACILITIES ARE SUBJECT TO VOLUNTARY GUIDELINES ADDRESSING BASIC HEALTH STANDARDS RATHER THAN REGULATIONS; CLARIFYING THE METHOD OF ESTABLISHING THE AVERAGE NUMBER OF GUESTS PER DAY FOR SEASONAL AND SMALL ESTABLISHMENTS; CLARIFYING THAT LOCAL GOVERNMENTS MAY ADOPT ORDINANCES ADDRESSING BASIC HEALTH STANDARDS; AND AMENDING SECTIONS 50-51-101, 50-51-102, 50-51-103, 50-51-201, AND 50-51-401, MCA 1348

335 *(House Bill No. 587; McNutt)* PROVIDING THE OPTION FOR AN ASSOCIATE WATER JUDGE; DEFINING THE DUTIES OF AN ASSOCIATE WATER JUDGE; GRANTING THE ASSOCIATE WATER JUDGE STATEWIDE JURISDICTION; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-1-1001, 3-1-1010, 3-7-221, 3-7-222, 3-7-223, 3-7-224, AND 19-5-301, MCA; AND PROVIDING AN EFFECTIVE DATE 1352

336 *(House Bill No. 607; Welborn)* REVISING THE PROCEDURE FOR THE SALE OF CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES; ALLOWING AN APPLICANT WHO IS NOT SUCCESSFUL IN A DRAWING FOR A SPECIAL ELK PERMIT TO PURCHASE ONLY THE CLASS B-7 PORTION OF A CLASS B-10 LICENSE AS A CLASS B-11 LICENSE; REQUIRING THE RESALE OF THE REMAINING NONRESIDENT ELK TAG AS AN ELK-ONLY COMBINATION LICENSE; AMENDING SECTION 87-2-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1355

337 *(House Bill No. 611; Cook)* GENERALLY REVISING THE USE OF ACCOUNTS AND FUNDS; REVISING THE ADVANCING AGRICULTURAL EDUCATION IN MONTANA PROGRAM ACCOUNT; REVISING THE USE OF THE RESEARCH AND COMMERCIALIZATION ACCOUNT TO INCLUDE THE DEPARTMENT OF AGRICULTURE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 20-7-334 AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE. 1358

338 *(House Bill No. 615; Williams)* REQUIRING THE INSURANCE COMMISSIONER TO STUDY EQUITABLE TREATMENT BY INSURERS FOR CANCER PATIENTS SEEKING TO PARTICIPATE IN CANCER CLINICAL TRIALS; REQUIRING THE INSURANCE COMMISSIONER TO COORDINATE WITH THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE; REQUIRING THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE TO REVIEW THE INSURANCE COMMISSIONER'S FINAL REPORT AND RECOMMEND APPROPRIATE LEGISLATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1361

339 *(House Bill No. 622; Ankney)* REVISING FUNDING FOR LIVESTOCK LOSS MITIGATION AND CONTROL OF PREDATORY ANIMALS; CREATING STATE SPECIAL REVENUE ACCOUNTS TO REIMBURSE PRODUCERS FOR LIVESTOCK LOSS AND TO PROTECT LIVESTOCK FROM PREDATORY ANIMALS; TRANSFERRING MONEY TO THE ACCOUNTS; CREATING STATUTORY APPROPRIATIONS TO THE DEPARTMENT OF LIVESTOCK SUBJECT TO A TERMINATION DATE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-3110, 2-15-3114, 15-1-122, 15-24-925, 17-7-502, 81-1-110, 81-7-103, AND 81-7-104, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 1362

340 *(Senate Bill No. 11; Erickson)* REDUCING THE WITHHOLDING TAX RATE ON THE PROCEEDS FROM LOTTERY WINNINGS; AMENDING SECTION 15-30-2522, MCA; AND PROVIDING AN EFFECTIVE DATE 1367

341 *(Senate Bill No. 126; Larsen)* REVISING THE LICENSING REQUIREMENTS AND FEES FOR FIRMS, NURSERIES, PLANT DEALERS, AND SMALL PLANT VENDORS THAT SELL OR DISTRIBUTE NURSERY STOCK; PROVIDING FOR RECIPROCAL LICENSURE; EXEMPTING CERTAIN FIRMS, NURSERIES, PLANT DEALERS, AND SMALL PLANT VENDORS FROM LICENSURE; IMPOSING A FEE FOR CERTAIN PLANT INSPECTIONS; REQUIRING THE DEPARTMENT OF AGRICULTURE TO ADOPT RULES; REQUIRING THE DEPARTMENT OF AGRICULTURE TO INCLUDE THE ACTUAL COSTS OF INSPECTION, SURVEYS, AND OTHER SERVICES IN THE FEE FOR CERTAIN PLANT INSPECTIONS; ESTABLISHING A MINIMUM AND MAXIMUM HOURLY FEE FOR INSPECTIONS; AMENDING SECTIONS 80-7-106 AND 80-7-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1368

342 *(Senate Bill No. 132; Essmann)* PROVIDING THAT A LICENSED AUDIOLOGIST SELLING, DISPENSING, OR FITTING HEARING AIDS IS NOT SUBJECT TO LICENSURE AS A HEARING AID DISPENSER; GRANTING RULEMAKING AUTHORITY TO THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; AND AMENDING SECTIONS 37-15-102, 37-15-103, 37-16-103, 37-16-401, AND 37-16-405, MCA 1370

343 *(Senate Bill No. 153; Jent)* REVISING THE APPOINTMENT OF COUNSEL IN CHILD ABUSE AND NEGLECT CASES; ALLOWING JUDGES DISCRETION IN APPOINTING COUNSEL FOR A CHILD OR YOUTH WHEN A GUARDIAN AD LITEM IS APPOINTED FOR THE CHILD OR YOUTH; AND AMENDING SECTION 41-3-425, MCA. . . . 1373

344 *(Senate Bill No. 187; Shockley)* GENERALLY REVISING THE MONTANA PUBLIC DEFENDER ACT AND RELATED STATUTES; RESTRICTING AND LIMITING CASELOAD LEVELS FOR THE CHIEF PUBLIC DEFENDER AND DEPUTY PUBLIC DEFENDERS; REQUIRING NOTARIZED AFFIDAVITS OF INDIGENCY; REVISING THE

PROVISION FOR PAYMENT BY DEFENDANTS OF PUBLIC DEFENDER SERVICES; AMENDING SECTIONS 2-15-1028, 46-8-101, 46-8-113, 46-8-114, 47-1-102, 47-1-105, 47-1-111, 47-1-202, 47-1-205, 47-1-215, AND 47-1-216, MCA; AND PROVIDING AN EFFECTIVE DATE 1374

345 *(Senate Bill No. 215; Gallus)* PROVIDING FOR A REDUCTION IN THE DEPARTMENT OF REVENUE MARKUP ON LIQUOR SOLD BY THE STATE BASED UPON THE PERCENTAGE OF MONTANA-PRODUCED INGREDIENTS USED IN THE PRODUCTION OF THE LIQUOR; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1384

346 *(Senate Bill No. 221; Gillan)* PROVIDING THAT THE COMMISSIONER OF INSURANCE MAY WAIVE HEALTH MAINTENANCE ORGANIZATION REQUIREMENTS FOR ACCOUNTABLE CARE ORGANIZATIONS; EXPANDING RULEMAKING AUTHORITY OF THE COMMISSIONER OF INSURANCE; AND AMENDING SECTIONS 33-31-102, 33-31-201, AND 53-6-702, MCA 1385

347 *(Senate Bill No. 283; Essmann)* ALLOWING REAL PROPERTY TO BE MOVED FROM ONE COUNTY TO ANOTHER FOR REASONS OF PUBLIC SAFETY; REQUIRING A PETITION AND REQUIRING THAT THE PETITION CONTAIN CERTAIN INFORMATION; REQUIRING THE PETITIONERS TO MEET CERTAIN QUALIFICATIONS; REQUIRING BOARDS OF COUNTY COMMISSIONERS IN AFFECTED ADJOINING COUNTIES TO ENTER INTO AN INTERLOCAL AGREEMENT UPON RECEIPT OF A PETITION BEFORE AN ELECTION MAY BE HELD; REQUIRING THAT THE PROCESS CEASE IF THE ADJOINING COUNTIES ARE UNABLE TO AGREE ON BOUNDARIES; PROVIDING FOR A VOTE AND FORM OF BALLOT; PROVIDING FOR A PROCESS IF THE ELECTORS VOTE TO CHANGE THE BOUNDARIES; REQUIRING TRANSFER OF CERTIFIED COPIES OF INDEXES AND LAND RECORD ABSTRACTS AND PROVIDING FOR REIMBURSEMENT OF ASSOCIATED COSTS; ALLOWING A COUNTY TO WHICH PROPERTY IS TRANSFERRED TO LEVY A TAX; REQUIRING NOTIFICATION OF CERTAIN STATE AGENCIES; PROVIDING THAT SCHOOL DISTRICTS ARE NOT AFFECTED; AMENDING SECTIONS 7-2-103, 7-2-2201, 7-2-2202, 7-2-2411, 7-2-2412, 7-4-2631, 7-4-2632, 7-4-2637, AND 15-10-420, MCA 1392

348 *(Senate Bill No. 294; Buttrey)* PROVIDING FOR FUNDING OF ENTRY-LEVEL EMPLOYEES UNDER THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT BY REQUIRING THAT TO BE ELIGIBLE FOR FUNDING, NEW JOBS CREATED MUST PROVIDE AN AVERAGE WEEKLY WAGE THAT MEETS OR EXCEEDS THE LESSER OF 170% OF MONTANA'S CURRENT MINIMUM WAGE OR THE CURRENT AVERAGE WEEKLY WAGE OF THE COUNTY IN WHICH THE EMPLOYEES ARE TO BE PRINCIPALLY EMPLOYED; PROVIDING ALTERNATE CRITERIA FOR WAGES FOR NEW JOBS; AMENDING SECTIONS 39-11-103 AND 39-11-202, MCA; REPEALING SECTION 39-11-201, MCA; AND PROVIDING AN EFFECTIVE DATE . 1401

349 *(Senate Bill No. 326; Larsen)* CREATING THE MONTANA VETERANS' HOME LOAN MORTGAGE PROGRAM WITH MONEY FROM THE PERMANENT COAL TAX TRUST FUND TO BE ADMINISTERED BY THE BOARD OF HOUSING; AMENDING SECTIONS 17-6-201 AND 17-6-308, MCA; AND PROVIDING AN EFFECTIVE DATE. 1405

350 *(Senate Bill No. 331; Jent)* GENERALLY REVISING SURPLUS LINES INSURANCE LAW; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ENTER INTO COOPERATIVE OR RECIPROCAL AGREEMENTS WITH OTHER STATES OR A CLEARINGHOUSE FOR

THE PURPOSE OF COLLECTING, ALLOCATING, AND DISBURSING PREMIUM TAXES AND FEES ATTRIBUTABLE TO MULTISTATE RISKS; REVISING DEFINITIONS; DEFINING "EXEMPT COMMERCIAL PURCHASER" AND "QUALIFIED RISK MANAGER"; PROVIDING EXCLUSIVE REGULATORY AND TAXING AUTHORITY TO THE HOME STATE OF THE INSURED; EXEMPTING SURPLUS LINES INSURANCE PRODUCERS FROM DILIGENT SEARCH REQUIREMENTS UNDER CERTAIN CIRCUMSTANCES; SPECIFYING CERTAIN LICENSING REQUIREMENTS; REVISING REQUIREMENTS PERTAINING TO UNAUTHORIZED INSURERS; ESTABLISHING REPORTING REQUIREMENTS; ESTABLISHING A TAX RATE ON SURPLUS LINES PREMIUMS; EXPANDING THE COMMISSIONER'S RULEMAKING AUTHORITY; REVISING EXEMPTIONS TO BE CONSISTENT WITH THE EXCLUSIVE REGULATORY JURISDICTION OF THE HOME STATE OF THE INSURED; ESTABLISHING THE FUNCTIONS OF THE SURPLUS LINES INSURANCE ADVISORY ORGANIZATION; AMENDING SECTIONS 2-9-211, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-307, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-317, AND 33-2-321, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1410

351 *(Senate Bill No. 351; Ripley)* REVISING LAWS RELATED TO MEDICAID MANAGED CARE CONTRACTS; ESTABLISHING AN ADVISORY COUNCIL; REQUIRING REVIEW OF REQUESTS FOR PROPOSALS AND PROPOSED CONTRACTS; AMENDING SECTIONS 33-1-102, 33-31-115, 53-6-116, 53-6-702, 53-6-704, 53-6-705, 53-6-707, AND 53-21-701, MCA; REPEALING SECTION 53-6-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1426

352 *(Senate Bill No. 354; Jent)* ADOPTING THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT; CLARIFYING APPLICABILITY OF UNSWORN DECLARATIONS; PROVIDING FOR VALIDATION OF UNSWORN DECLARATIONS; PROVIDING A FORM FOR UNSWORN DECLARATIONS; AND CLARIFYING THE LEGAL AUTHORITY WITH RESPECT TO ELECTRONIC SIGNATURES UNDER THIS ACT WITH RESPECT TO FEDERAL LAW 1434

353 *(Senate Bill No. 411; Erickson)* REVISING THE UNIFORM PENALTY ASSESSMENTS ON DELINQUENT TAXES; AMENDING THE WAIVER OF INTEREST; PROVIDING THAT THE PENALTIES FOR SUBSTANTIAL UNDERSTATEMENT OF A TAX OR FOR FILING A FRAUDULENT OR FRIVOLOUS RETURN OR REPORT ARE SIMILAR TO FEDERAL PENALTIES; AMENDING SECTIONS 15-1-206 AND 15-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1435

354 *(Senate Bill No. 417; Buttrey)* CREATING THE MILITARY AREA COMPATIBILITY ACT; ALLOWING A GOVERNING BODY TO DESIGNATE MILITARY AFFECTED AREAS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR MILITARY AFFECTED AREA REGULATIONS; REQUIRING MAPS AND LEGAL DESCRIPTIONS OF THE MILITARY AFFECTED AREA; REQUIRING A PUBLIC HEARING BEFORE DESIGNATION OF A MILITARY AFFECTED AREA; ALLOWING CREATION OF A JOINT REGULATION BOARD; PROVIDING FOR PRIOR NONCONFORMING USES IN A MILITARY AFFECTED AREA; ALLOWING REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING THE REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS; PROVIDING FOR A

VARIANCE FROM THE REGULATIONS; AND PROVIDING PENALTIES AND REMEDIES FOR VIOLATIONS 1438

355 *(Senate Bill No. 429; Wittich)* REVISING LAWS ON REINSTATEMENT OF A LIMITED LIABILITY COMPANY FOLLOWING ADMINISTRATIVE DISSOLUTION; AMENDING SECTION 35-8-912, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . 1443

356 *(House Bill No. 132; Hoven)* SIMPLIFYING CLASSIFICATION AND REPORTING OF VALUES ASSIGNED TO TAXABLE PROPERTY; UPDATING THE DEFINITION OF "ANIMAL UNIT MONTHS" TO COMPLY WITH CURRENT GRAZING PRACTICES; ELIMINATING OBSOLETE LANGUAGE RELATING TO AGRICULTURAL AND FOREST LAND; AND AMENDING SECTIONS 15-7-101, 15-7-102, 15-7-103, 15-7-139, 15-7-201, AND 15-44-103, MCA 1445

357 *(House Bill No. 258; Edmunds)* ADDING THE DEFINITION OF "DAY VISITOR" AS A CATEGORY OF PERSON WHO VISITS A GUEST RANCH AND MAY BE SERVED FOOD; EXEMPTING A GUEST RANCH THAT SERVES FOOD TO DAY VISITORS FROM THE DEFINITION OF A "FOOD SERVICE ESTABLISHMENT"; AMENDING SECTIONS 50-50-102 AND 50-51-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1453

358 *(House Bill No. 477; Hollandsworth)* ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT FOR THE MONTANA HISTORICAL SOCIETY FOR COSTS ASSOCIATED WITH HISTORICAL INTERPRETATION AND THE ROBERT SCRIVER COLLECTION; PROVIDING AN ALLOCATION TO THE ACCOUNT FROM THE LODGING FACILITY USE TAX; DECREASING AN ALLOCATION TO THE DEPARTMENT OF COMMERCE FROM THE LODGING FACILITY USE TAX; AMENDING SECTION 15-65-121, MCA; AND PROVIDING AN EFFECTIVE DATE . 1456

359 *(Senate Bill No. 35; Hamlett)* GENERALLY REVISING AND CLARIFYING LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BEDS OF NAVIGABLE RIVERS; DEFINING A "NAVIGABLE RIVER"; REQUIRING AUTHORIZATION FROM THE BOARD OF LAND COMMISSIONERS FOR USES ON THE BEDS OF NAVIGABLE RIVERS; REQUIRING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES FOR PROVIDING LEASES, LICENSES, OR EASEMENTS FOR USES ON THE BEDS OF NAVIGABLE RIVERS; CLARIFYING THE AUTHORITY OF THE BOARD OF LAND COMMISSIONERS TO GRANT EASEMENTS; AND AMENDING SECTIONS 77-1-121, 77-1-134, AND 77-2-101, MCA 1458

360 *(Senate Bill No. 36; Hamlett)* PROVIDING A DISTRICT COURT DISCRETION TO AWARD REASONABLE COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF AN APPEAL OF A FINAL DECISION ON A PERMIT APPLICATION OR A CHANGE IN APPROPRIATION RIGHT; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1463

361 *(Senate Bill No. 156; Windy Boy)* ALLOWING TRIBAL FAMILY ASSISTANCE PLANS TO USE A PORTION OF TEMPORARY ASSISTANCE TO NEEDY FAMILIES MAINTENANCE OF EFFORT FUNDS FOR NONCASH BENEFITS; AMENDING SECTION 53-4-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1464

362 *(Senate Bill No. 410; Brenden)* PROVIDING FOR THE DISPOSITION OF ANY FUNDS RECOVERED BY THE STATE OF MONTANA FROM PPL MONTANA, LLC, FOR THE USE OF NAVIGABLE RIVERBED LANDS FOR POWER GENERATION FROM 2000 THROUGH 2007;

ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT FOR ANY RECOVERED FUNDS FOR THE PURPOSE OF PURCHASING REAL PROPERTY; PROVIDING CONSIDERATIONS FOR THE BOARD OF LAND COMMISSIONERS TO TAKE INTO ACCOUNT WHEN DETERMINING WHETHER TO PURCHASE REAL PROPERTY AND APPURTENANCES; PROVIDING FOR THE DISPOSITION OF INTEREST AND INCOME TO THE GUARANTEE ACCOUNT FOR DISTRIBUTION TO PUBLIC SCHOOLS; PROVIDING FOR OFFSETTING OF LAND PURCHASES; ESTABLISHING LIMITS ON ACQUISITION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 77-1-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 1465

363 *(House Bill No. 2; McNutt)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2013; AND PROVIDING AN EFFECTIVE DATE 1468

364 *(House Bill No. 4; Mehlhoff)* APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2011; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2012 AND 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1522

365 *(House Bill No. 6; McChesney)* IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE 1535

366 *(House Bill No. 8; Sesso)* REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 61ST LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS ON LOANS; AND PROVIDING AN EFFECTIVE DATE 1542

367 *(House Bill No. 9; Hollenbaugh)* ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE 1544

368 *(House Bill No. 10; Hollenbaugh)* REDUCING CERTAIN 2009 INFORMATION TECHNOLOGY APPROPRIATIONS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF REVENUE, AND THE SUPREME COURT AND REVISING APPROPRIATION CONDITIONS; REVISING BIDDER CRITERIA FOR THE UNEMPLOYMENT INSURANCE TAX MODERNIZATION PROJECT; AMENDING SECTION 14, CHAPTER 3, SPECIAL LAWS OF MAY 2007, SECTION 16, CHAPTER 3, SPECIAL LAWS OF MAY 2007, AND SECTION 2, CHAPTER 435, LAWS OF 2009; TRANSFERRING FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1547

369 *(House Bill No. 122; Malek)* REVISING BENEFIT AND FUNDING PROVISIONS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM;

INCREASING THE NORMAL RETIREMENT AGE FOR NEW HIRES; INCREASING THE AGE OF ELIGIBILITY FOR EARLY RETIREMENT FOR NEW HIRES; ELIMINATING EARLY RETIREMENT ELIGIBILITY BASED ON MEMBERSHIP SERVICE FOR NEW HIRES; CHANGING THE CALCULATION OF HIGHEST AVERAGE COMPENSATION FOR NEW HIRES; REDUCING THE MULTIPLIER USED TO CALCULATE BENEFIT PAYMENTS FOR NEW HIRES; INCREASING THE EMPLOYEE CONTRIBUTIONS DUE ON BEHALF OF NEW HIRES; AMENDING SECTIONS 19-3-108, 19-3-315, 19-3-513, 19-3-901, 19-3-902, 19-3-904, 19-3-906, 19-3-1002, 19-3-1008, 19-3-1106, 19-3-1205, 19-3-2117, 19-3-2141, AND 19-21-214, MCA; AND PROVIDING AN EFFECTIVE DATE 1551

370 *(House Bill No. 159; Smith)* RESTRICTING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE FISH, WILDLIFE, AND PARKS COMMISSION TO REGULATE FIREARMS, FIREARM ACCESSORIES, AND AMMUNITION; AND AMENDING SECTIONS 87-1-201, 87-1-301, 87-1-303, 87-1-304, AND 87-3-301, MCA 1561

371 *(House Bill No. 165; Hollandsworth)* REVISING AND CLARIFYING THE DISTRIBUTION OF PROCEEDS AND INCOME FROM CERTAIN STATE TRUST LANDS; PROVIDING THAT INCOME RECEIVED FROM CERTAIN ISLANDS, ABANDONED RIVERBEDS, RIVERBEDS, AND POWER SITES BE DEPOSITED IN THE GUARANTEE ACCOUNT AND THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT FOR DISTRIBUTION TO PUBLIC SCHOOLS; INCLUDING STATE REIMBURSEMENT FOR SCHOOL FACILITIES AS A PURPOSE OF THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; AMENDING SECTIONS 17-3-1003, 20-9-516, 77-1-102, 77-1-103, AND 77-4-208, MCA; AMENDING SECTION 32, CHAPTER 486, LAWS OF 2009; AND PROVIDING AN EFFECTIVE DATE. 1566

372 *(House Bill No. 310; Blyton)* REVISING THE LAWS RELATING TO INITIATIVES AND REFERENDA; REQUIRING STATEMENTS ON PETITIONS FOR INITIATIVES AND REFERENDA AND ON THE BALLOT THAT CLEARLY INDICATE THAT A "YES" VOTE SUPPORTS A BALLOT ISSUE AND THAT A "NO" VOTE OPPOSES A BALLOT ISSUE; REQUIRING A SINGLE STATEMENT OF PURPOSE AND IMPLICATION; AMENDING SECTIONS 13-27-202, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-312, 13-27-315, AND 13-27-501, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1569

373 *(House Bill No. 460; Peterson)* REQUIRING THE DEPARTMENT OF REVENUE TO ESTABLISH BY RULE A METHOD FOR VALUING TOWNHOUSES; DEFINING "TOWNHOUSE" AND "TOWNHOME"; PROVIDING THAT THE UNIT OWNERSHIP ACT MAY APPLY TO TOWNHOUSES; CONFORMING PROVISIONS OF THE UNIT OWNERSHIP ACT WITH THE DEFINITIONS OF "TOWNHOUSE" AND "TOWNHOME"; AMENDING SECTIONS 15-8-111, 70-23-102, 70-23-103, 70-23-301, AND 76-3-203, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1575

374 *(House Bill No. 560; Arntzen)* INCREASING PUBLIC INVOLVEMENT IN THE CREATION AND OPERATION OF URBAN RENEWAL DISTRICTS; REQUIRING THE URBAN RENEWAL DISTRICT TO INCLUDE THE AMOUNT OF THE TAX INCREMENT OF THE DISTRICT IN THE REPORT FILED WITH THE MUNICIPALITY; AND AMENDING SECTIONS 7-15-4214, 7-15-4215, AND 7-15-4237, MCA 1580

375 *(House Bill No. 561; Arntzen)* CHANGING THE CRITERIA FOR FACTORS INVOLVED IN THE CREATION AND OPERATION OF URBAN RENEWAL DISTRICTS; REQUIRING THE FINDINGS BY A

MUNICIPALITY THAT CERTAIN URBAN RENEWAL CONDITIONS EXIST; AND AMENDING SECTION 7-15-4210, MCA 1581

376 *(House Bill No. 562; Arntzen)* REQUIRING NOTIFICATION OF THE COUNTY AND SCHOOLS REGARDING VARIOUS PROVISIONS OF AN URBAN RENEWAL DISTRICT WITHIN THE JURISDICTION OF A MUNICIPALITY; REQUIRING NOTIFICATION OF THE INTENDED USE OF TAX INCREMENT FINANCING TO THE COUNTY AND SCHOOLS; REQUIRING THE ANNUAL REPORT OF URBAN RENEWAL DISTRICTS TO BE MADE AVAILABLE UPON REQUEST TO THE COUNTY AND SCHOOLS WITHIN THE TERRITORIAL JURISDICTION OF A MUNICIPALITY; AND AMENDING SECTIONS 7-15-4211, 7-15-4221, 7-15-4237, AND 7-15-4282, MCA 1581

377 *(House Bill No. 565; Noonan)* CLARIFYING REQUIREMENTS FOR PROVIDING CHILDREN WITH MENTAL HEALTH NEEDS WITH IN-STATE SERVICE ALTERNATIVES TO OUT-OF-STATE PLACEMENT; REVISING DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PROCEDURES FOR DETERMINING PLACEMENT OF CHILDREN IN OUT-OF-STATE SERVICES; REVISING REPORTING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 52-2-308, 52-2-310, AND 52-2-311, MCA 1583

378 *(House Bill No. 621; Ankney)* REVISING LAWS RELATED TO THE PREVENTION AND CONTROL OF AQUATIC INVASIVE SPECIES IN MONTANA; REVISING THE MONTANA AQUATIC INVASIVE SPECIES ACT; AUTHORIZING COLLABORATION WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ELIMINATING THE COORDINATING AUTHORITY; AUTHORIZING THE USE OF QUARANTINE MEASURES IN AN INVASIVE SPECIES MANAGEMENT AREA; APPROPRIATING FUNDS FROM THE STATE GENERAL FUND; AMENDING SECTIONS 80-7-1002, 80-7-1003, 80-7-1005, 80-7-1006, 80-7-1007, 80-7-1008, AND 80-7-1011, MCA; AND PROVIDING AN EFFECTIVE DATE. 1585

379 *(House Bill No. 641; Hands)* REVISING THE PROCESS FOR THE REVIEW OF TAX EXPENDITURES; PROVIDING THAT THE DEPARTMENT OF REVENUE IS REQUIRED TO REPORT CERTAIN TAX EXPENDITURES IN THE BIENNIAL REPORT AND MAKE IT AVAILABLE TO THE PUBLIC; ALLOWING A FEE FOR PUBLISHING COSTS OF THE BIENNIAL REPORT; ENCOURAGING A STATEMENT OF PURPOSE IN TAX EXPENDITURE LEGISLATION; AMENDING SECTION 15-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE. . 1589

380 *(House Bill No. 642; Blasdel)* PROVIDING FOR A SELECT COMMITTEE ON EFFICIENCY IN GOVERNMENT; PROVIDING FOR MEMBERSHIP AND DUTIES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1591

381 *(Senate Bill No. 166; Balyeat)* ALLOWING A TAXPAYER THAT HAS AN INDIVIDUAL INCOME TAX LIABILITY FOR THE CURRENT YEAR OF $200 OR LESS TO PAY THE ENTIRE AMOUNT OF THE TAX DUE, WITHOUT PENALTY OR INTEREST, WHEN FILING AN EXTENDED RETURN; AMENDING SECTIONS 15-1-216 AND 15-30-2604, MCA; AND PROVIDING AN APPLICABILITY DATE 1594

382 *(Senate Bill No. 206; Jones)* REVISING THE MONTANA MAJOR FACILITY SITING ACT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO EXAMINE A 1-MILE-WIDE FACILITY SITING CORRIDOR ALONG THE FACILITY ROUTE WHEN CONDUCTING A REVIEW IN ACCORDANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT IN CONJUNCTION WITH AN

APPLICATION FOR A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT; EXEMPTING SITING MODIFICATIONS WITHIN THE FACILITY SITING CORRIDOR FROM TITLE 75, CHAPTER 1, PART 2; REQUIRING FACILITIES TO BE SITED IN FEDERALLY DESIGNATED ENERGY CORRIDORS WHEN COMPATIBLE WITH OTHER SITING AND RELIABILITY REQUIREMENTS; AMENDING SECTIONS 75-20-104, 75-20-301, AND 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1596

383 *(Senate Bill No. 212; Ripley)* CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE WILD BUFFALO OR BISON; REQUIRING A MANAGEMENT PLAN BEFORE WILD BUFFALO OR BISON MAY BE RELEASED OR TRANSPLANTED ONTO PRIVATE OR PUBLIC LAND; AMENDING SECTION 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1602

384 *(Senate Bill No. 279; Jackson)* PROVIDING AN EXCEPTION TO THE OFFENSE OF CARRYING A CONCEALED WEAPON FOR LEGISLATIVE SECURITY STAFF IN THE STATE CAPITOL WHO HAVE BEEN ISSUED A CONCEALED WEAPON PERMIT; PROVIDING THAT A LOCAL ORDINANCE MAY NOT PROHIBIT LEGISLATIVE SECURITY STAFF WITH A CONCEALED WEAPON PERMIT FROM CARRYING A CONCEALED WEAPON IN THE STATE CAPITOL; AND AMENDING SECTIONS 45-8-317, 45-8-328, AND 45-8-351, MCA. . . . 1604

385 *(Senate Bill No. 305; Jackson)* REVISING MONTANA'S ENERGY POLICY; AMENDING SECTION 90-4-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1606

386 *(Senate Bill No. 338; Arthun)* PROVIDING RESTRICTIONS FOR STATE OFFICERS WITH REGARD TO PUBLIC SERVICE ANNOUNCEMENTS; PROVIDING A PENALTY; PROVIDING FOR REPORTING ON THE EXPENDITURE OF STATE FUNDS FOR PUBLIC SERVICE ANNOUNCEMENTS; AND AMENDING SECTIONS 2-2-121, 2-2-136, AND 17-2-304, MCA 1608

387 *(House Bill No. 5; Sesso)* GENERALLY REVISING LAWS RELATING TO CAPITAL PROJECTS; APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2013; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE LONG-RANGE BUILDING PROGRAM ACCOUNT TO THE STATE GENERAL FUND; REVISING REQUIREMENTS FOR CIGARETTE TAX REVENUE; AMENDING SECTION 17-7-205, MCA; AMENDING SECTION 2, CHAPTER 3, SPECIAL LAWS OF MAY 2007, SECTION 2, CHAPTER 478, LAWS OF 2009, AND SECTION 6, CHAPTER 478, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1612

388 *(House Bill No. 7; Belcourt)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE 1624

389 *(House Bill No. 351; Cook)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE

DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY INFRASTRUCTURE PLANNING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; REQUIRING THE TRANSFER OF MONEY FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT TO THE STATE GENERAL FUND; RETAINING THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND WITHIN THE COAL SEVERANCE TAX TRUST FUND FOR AN ADDITIONAL 4 YEARS; EXTENDING TRANSFERS TO THE TREASURE STATE ENDOWMENT FUND AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND TO 2020; REVISING GRANT CONDITIONS AND RANKING PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 17-5-703, 90-6-703, AND 90-6-710, MCA; AMENDING SECTION 6, CHAPTER 495, LAWS OF 1999, AND SECTION 1, CHAPTER 70, LAWS OF 2001; REPEALING SECTION 2, CHAPTER 70, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE 1627

390 *(House Bill No. 363; Cuffe)* ESTABLISHING THE USE OF FEES COLLECTED FROM THE SALE OF WOLF HUNTING LICENSES; ESTABLISHING THE WOLF MANAGEMENT ACCOUNT; AUTHORIZING THE TRANSFER OF FUNDS; AMENDING SECTIONS 87-1-601, 87-2-523, 87-2-524, AND 87-5-132, MCA; AND PROVIDING AN EFFECTIVE DATE 1636

391 *(House Bill No. 372; Washburn)* ESTABLISHING A PREFERENCE POINT SYSTEM FOR DISTRIBUTING CERTAIN NONRESIDENT HUNTING LICENSES; AMENDING SECTION 87-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE 1640

392 *(House Bill No. 377; Warburton)* ALLOWING THE USE OF MEDICATION AIDES IN LONG-TERM CARE FACILITIES; ESTABLISHING QUALIFICATIONS AND SCOPE OF PRACTICE FOR CERTAIN MEDICATION AIDES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-8-102 AND 37-8-422, MCA. 1643

393 *(House Bill No. 495; Cook)* REVISING STATUTORY APPROPRIATIONS; REDUCING STATUTORY APPROPRIATION DISTRIBUTIONS; CLARIFYING THE PROVISIONS OF THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENT PROGRAM; ELIMINATING THE LOCAL GOVERNMENT ENTITLEMENT SHARE ANNUAL GROWTH FACTOR FOR FISCAL YEARS 2012 AND 2013; REVISING THE ENTITLEMENT SHARE GROWTH RATE; REDUCING THE LOCAL GOVERNMENT ENTITLEMENT SHARE FOR TAX INCREMENT FINANCING DISTRICTS; ELIMINATING THE THREE-FIFTHS VOTE REQUIREMENT FOR REVISION OF THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENTS; PROHIBITING AN INCREASE IN THE NUMBER OF MILLS A LOCAL GOVERNMENT MAY LEVY FOR A REIMBURSED TAX BASE DECREASE; AMENDING SECTIONS 15-1-121 AND 15-10-420, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1646

394 *(House Bill No. 613; Roberts)* GENERALLY REVISING ELEMENTS OF THE BUDGETING PROCESS TO IMPLEMENT PROVISIONS OF THE GENERAL APPROPRIATIONS ACT; DEFINING THE BASE BUDGET

FOR THE HUMAN AND COMMUNITY SERVICES DIVISION IN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT EMPLOYEES OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND ARE EXEMPT FROM VACANCY SAVINGS; REVISING REPORTING REQUIREMENTS FOR THE OFFICE OF STATE PUBLIC DEFENDER TO THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING BENCHMARKS FOR CATEGORIZING PETROLEUM STORAGE TANK RELEASE SITES AS RESOLVED AND THE ELIMINATION OF THE BASE BUDGET WHEN BENCHMARKS ARE NOT MET; ESTABLISHING REPORTING REQUIREMENTS TO THE ENVIRONMENTAL QUALITY COUNCIL REGARDING THE CLOSURE OF PETROLEUM STORAGE TANK RELEASE SITES AS IT RELATES TO THE BASE BUDGET AND THE BENCHMARKS; AMENDING SECTIONS 17-7-102 AND 47-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1658

395 *(House Bill No. 619; Ankney)* REVISING FISH, WILDLIFE, AND PARKS FOREST MANAGEMENT LAWS BY REQUIRING THE CALCULATION OF AN ANNUAL SUSTAINABLE YIELD; ESTABLISHING A FOREST MANAGEMENT PLAN AND A SUSTAINABLE YIELD STUDY; ESTABLISHING THAT COSTS TO IMPLEMENT THE FOREST MANAGEMENT PLAN ARE AN AUTHORIZED EXPENDITURE; AMENDING SECTIONS 87-1-201 AND 87-1-621, MCA; AND PROVIDING AN EFFECTIVE DATE 1665

396 *(Senate Bill No. 233; Keane)* REVISING ENVIRONMENTAL IMPACT LAWS; REVISING STATUTES RELATED TO AN ENVIRONMENTAL IMPACT ANALYSIS AND AN ENVIRONMENTAL ASSESSMENT; PROVIDING DEFINITIONS; CLARIFYING THAT ALTERNATIVES INCLUDED IN AN ALTERNATIVES ANALYSIS ARE DISCRETIONARY; PROVIDING THAT THE SCOPE OF AN ENVIRONMENTAL REVIEW IS ONLY WITHIN MONTANA'S BORDERS; PROVIDING THE REMEDY FOR FAILURE BY AN AGENCY TO COMPLY WITH THE REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; REVISING THE ENVIRONMENTAL REVIEW FEE ASSESSMENT; AMENDING SECTIONS 75-1-102, 75-1-201, 75-1-203, 75-1-208, AND 75-1-220, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE 1668

397 *(Senate Bill No. 241; Priest)* REVISING THE FORMULA FOR DETERMINING MEDICAID REIMBURSEMENT RATES FOR PHYSICIANS; REVISING DEFINITIONS; AMENDING SECTIONS 53-6-124 AND 53-6-125, MCA; REPEALING SECTION 53-6-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1688

398 *(Senate Bill No. 292; Olson)* DEFINING "IN SITU COAL GASIFICATION"; DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR IN SITU COAL GASIFICATION; CLARIFYING THAT INJECTIONS INTO GROUNDWATER FOR IN SITU COAL GASIFICATION ARE NOT POLLUTION; AND AMENDING SECTIONS 75-5-103 AND 82-4-203, MCA 1689

399 *(Senate Bill No. 295; Lake)* REVISING THE MANNER OF APPRAISING CERTAIN PROPERTIES FOR PROPERTY TAX PURPOSES; ALLOWING ANNUAL INFORMAL REVIEWS OF CLASSIFICATION AND APPRAISAL FOR AGRICULTURAL, RESIDENTIAL AND COMMERCIAL, AND FOREST PROPERTY; REQUIRING CERTAIN INFORMATION BE PROVIDED TO AN OBJECTOR FOR USE IN INFORMAL REVIEWS; PROHIBITING AN INCREASE IN THE VALUE OF PROPERTY THROUGH AN INFORMAL REVIEW EXCEPT DUE TO

A PHYSICAL CHANGE IN A PROPERTY OR A MISTAKE IN A PROPERTY DESCRIPTION; PROVIDING THAT THE CONSIDERATION PAID ON A MORTGAGE FORECLOSURE MUST BE DISCLOSED IN A REALTY TRANSFER CERTIFICATE; REQUIRING THE USE OF THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE; REQUIRING THAT ERRONEOUS CALCULATION ERRORS MUST BE CORRECTED FOR ALL AFFECTED PROPERTIES; AMENDING SECTIONS 15-7-102, 15-7-307, 15-8-111, AND 15-8-601, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1704

400 *(Senate Bill No. 348; Barrett)* CLARIFYING THE FUNDING OF WOLF MANAGEMENT; AUTHORIZING THE USE OF STATE FUNDS FOR COLLARING AND CONTROL OF WOLVES; AMENDING SECTION 87-5-132, MCA; AND PROVIDING AN EFFECTIVE DATE. 1710

401 *(Senate Bill No. 409; Tutvedt)* GENERALLY REVISING STATE LAND CABIN SITE LAWS; AUTHORIZING AN ALTERNATIVE RENTAL MARKET VALUATION COMPETITIVE BID PROCESS; AUTHORIZING THE SALE OF STATE-LEASED CABIN OR HOME SITES OR CITY OR TOWN LOTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 77-1-208, AND 77-2-318, MCA; REPEALING SECTION 77-2-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1712

402 *(Senate Bill No. 125; Wittich)* PROHIBITING MONTANA STATE GOVERNMENT FROM ADMINISTERING FEDERAL HEALTH INSURANCE PURCHASE REQUIREMENTS 1715

403 *(Senate Bill No. 207; Moore)* CLARIFYING THE REGULATION OF BISON; GRANTING RULEMAKING AUTHORITY TO ESTABLISH A PERMIT AND INSPECTION SYSTEM FOR THE TRANSPORTATION OF BISON; PROVIDING DEFINITIONS; AMENDING SECTIONS 81-1-101, 81-2-120, 81-2-121, 81-3-201, 81-4-603, 81-5-101, 85-1-104, AND 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1716

404 *(Senate Bill No. 229; Sonju)* AUTHORIZING CERTAIN SEPARATE LEGAL ENTITIES CREATED UNDER THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT TO CONTRACT WITH THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO PROVIDE RETIREMENT SYSTEM COVERAGE FOR EMPLOYEES OF A LEGAL ENTITY. 1722

405 *(Senate Bill No. 265; Hamlett)* PROVIDING FOR A TAX ABATEMENT FOR CERTAIN RESIDENTIAL GRAY WATER SYSTEMS AND COMMON GRAY WATER AND POTABLE WATER SYSTEMS; ESTABLISHING REQUIREMENTS FOR THE RESIDENCES AND FOR A MINIMUM NUMBER OF OCCUPANTS TO QUALIFY; PROVIDING FOR THE ABATEMENT DURING CONSTRUCTION AND FOR 10 YEARS FOLLOWING COMPLETION OF CONSTRUCTION; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE USE OF THE ABATEMENT; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1723

406 *(Senate Bill No. 266; Olson)* REVISING THE LOCAL ABATEMENT OF THE COAL GROSS PROCEEDS TAX ON COAL PRODUCED BY A NEW OR EXPANDING UNDERGROUND COAL MINE; PROVIDING THAT THE TAX ABATEMENT MAY BE 50% OR LESS FOR AN UNDERGROUND MINE TAXED AT 5% OF THE VALUE OF COAL; PROVIDING AN INITIAL COAL GROSS PROCEEDS TAX OF 2.5% ON COAL PRODUCED FROM A NEW OR EXISTING UNDERGROUND MINE FOR AN INITIAL 10-YEAR PERIOD; AMENDING SECTIONS

15-23-703 AND 15-23-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . 1725

407 *(Senate Bill No. 286; Olson)* REVISING COAL PROSPECTING LAWS; MODIFYING CERTAIN COAL PROSPECTING PROCEDURES; AMENDING SECTION 82-4-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . 1727

408 *(Senate Bill No. 297; Essmann)* DEFINING "COAL BENEFICIATION PLANT"; EXCLUDING COAL BENEFICIATION PLANTS FROM PERMITTING AND REGULATION UNDER THE MONTANA STRIP AND UNDERGROUND MINING RECLAMATION ACT; CLARIFYING THAT A COAL PREPARATION FACILITY REGULATED UNDER THAT ACT DOES NOT INCLUDE A FACILITY WHERE COAL IS PREPARED AND THEN CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON; CLARIFYING THAT A MINING OPERATION DOES NOT INCLUDE A FACILITY OR SURFACE PREMISES WHERE COAL IS CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON OR A COAL BENEFICIATION PLANT; AMENDING SECTION 82-4-203, MCA; AND PROVIDING AN EFFECTIVE DATE. 1730

409 *(Senate Bill No. 298; Vincent)* PROVIDING THAT A GOVERNING BODY MAY NOT DENY A PROPOSED SUBDIVISION BASED SOLELY ON A CERTAIN WILDLAND-URBAN INTERFACE DESIGNATION; AND AMENDING SECTION 76-3-608, MCA. 1737

410 *(Senate Bill No. 312; Vincent)* REVISING METAL MINE RECLAMATION LAWS; REQUIRING THAT DRAFT PERMITS BE ISSUED FOR COMPLETE AND COMPLIANT APPLICATIONS; REVISING COORDINATION OF PERMIT REVIEWS WITH THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-335, 82-4-337, 82-4-342, AND 82-4-353, MCA . . 1738

411 *(Senate Bill No. 372; Tutvedt)* REDUCING THE TAXATION FOR A PORTION OF THE TAXABLE MARKET VALUE OF CLASS EIGHT BUSINESS EQUIPMENT OWNED BY A TAXPAYER; PROVIDING FUTURE TAX REDUCTIONS CONTINGENT ON INCREASES IN STATE COLLECTIONS OF INDIVIDUAL INCOME TAX AND CORPORATION LICENSE TAX; CHANGING OTHER PROVISIONS RELATING TO TAXATION OF CLASS EIGHT PROPERTY; PROVIDING A REIMBURSEMENT TO LOCAL GOVERNMENTS AND TAX INCREMENT FINANCING DISTRICTS UNDER THE ENTITLEMENT SHARE PAYMENT, TO SCHOOL DISTRICTS THROUGH THE BLOCK GRANT PROGRAM, TO COUNTY SCHOOL RETIREMENT AND COUNTY TRANSPORTATION REIMBURSEMENT, AND TO THE MONTANA UNIVERSITY SYSTEM THROUGH SUPPORT OF PUBLIC EDUCATION INSTITUTIONS FOR THE LOSS OF CLASS EIGHT AND CLASS TWELVE PROPERTY TAX REVENUE; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 15-1-121, 15-6-138, 15-6-141, 15-10-420, 15-23-101, 17-7-502, 20-9-501, 20-9-630, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 1753

412 *(Senate Bill No. 29; Moss)* GENERALLY PROVIDING FOR THE TRAINING OF PERSONS SELLING OR SERVING ALCOHOLIC BEVERAGES; PROVIDING A PENALTY; REQUIRING CONSIDERATION OF MITIGATING CIRCUMSTANCES; PROVIDING FOR RULEMAKING; AND PROVIDING THAT THE DEPARTMENT OF REVENUE HAS SOLE JURISDICTION FOR THE TRAINING PROGRAM 1776

413 *(Senate Bill No. 100; Shockley)* PROVIDING FOR DISPOSITION OF COMPENSATORY DAMAGES AND INTEREST FROM ANY FUTURE LITIGATION RESULTING FROM THE WRONGFUL USE OR OCCUPATION OF STATE LANDS; CLARIFYING LEGISLATIVE APPROPRIATION AUTHORITY; AMENDING SECTION 77-1-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1778

414 *(Senate Bill No. 108; Barrett)* REQUIRING CONSULTATION AND COORDINATION WITH CERTAIN COUNTY AND TRIBAL GOVERNMENTS IN PROPOSED STATE AND FEDERAL POLICY DECISIONS REGARDING LARGE PREDATORS AND LARGE GAME SPECIES; AMENDING SECTION 87-1-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1778

415 *(Senate Bill No. 136; Balyeat)* REVISING RESIDENCY REQUIREMENTS FOR HUNTING LICENSES; AMENDING SECTIONS 87-1-290, 87-2-514, AND 87-2-515, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1779

416 *(Senate Bill No. 143; Barrett)* REVISING MONTANA GRIZZLY BEAR POLICY TO AVOID CONFLICTS WITH HUMANS AND LIVESTOCK; AMENDING SECTION 87-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1781

417 *(Senate Bill No. 277; Moore)* CLARIFYING THAT THE BEEF CHECK-OFF IS TO BE PAID ONLY ON CATTLE SOLD; LIMITING THE FEE CHARGEABLE BY THE DEPARTMENT OF LIVESTOCK FOR COLLECTING THE NATIONAL BEEF CHECK-OFF; REQUIRING THE LEGISLATIVE AUDITOR TO AUDIT THE DEPARTMENT OF LIVESTOCK'S DIRECT COSTS FOR COLLECTING THE BEEF CHECK-OFF; AMENDING SECTIONS 81-1-102, 81-8-901, AND 81-8-902, MCA; AND PROVIDING AN EFFECTIVE DATE 1781

418 *(Senate Bill No. 329; Zinke)* GENERALLY REVISING K-12 EDUCATION LAWS; CREATING THE PATHWAY TO EXCELLENCE PROGRAM; AMENDING THE STRUCTURE OF ESTIMATING AND ALLOCATING OIL AND NATURAL GAS PRODUCTION TAXES FOR SCHOOLS; CHANGING THE MONTANA VIRTUAL ACADEMY TO THE MONTANA DIGITAL ACADEMY; LIMITING A SCHOOL DISTRICT'S FUND BALANCE REAPPROPRIATED TO A PERCENTAGE OF THE MAXIMUM GENERAL FUND BUDGET; ALLOWING A SCHOOL DISTRICT A ONE-TIME TRANSFER OF GENERAL FUND MONEY; PROVIDING AN INFLATIONARY INCREASE TO THE BASIC ENTITLEMENT AND TOTAL PER-ANB ENTITLEMENT; CREATING A STATE SCHOOL OIL AND NATURAL GAS IMPACT ACCOUNT; CREATING A COUNTY SCHOOL OIL AND NATURAL GAS IMPACT FUND; ALLOWING FOR MULTIDISTRICT AGREEMENTS; DEFINING "MULTIDISTRICT COOPERATIVE"; ALLOWING TRUSTEES TO DECIDE THE DISPOSITION OF INACTIVE TUITION FUNDS; EXEMPTING PARTICIPANTS IN A COOPERATIVE PURCHASING GROUP FROM CERTAIN COMPETITIVE BIDDING REQUIREMENTS; ALLOWING THE TRANSFER OF FUNDS RAISED BY A VOTED OR PERMISSIVE LEVY IF VOTERS APPROVE THE TRANSFER IN AN ELECTION; ALLOWING TRUSTEES TO IMPOSE AN OVER-BASE LEVY IN SUPPORT OF A DISTRICT'S GENERAL FUND BUDGET IN AN AMOUNT NOT TO EXCEED REVENUE AMOUNTS PREVIOUSLY AUTHORIZED BY THE VOTERS IN THE PREVIOUS 5 YEARS; ELIMINATING THE PERCENTAGE OF GROWTH FOR SCHOOL DISTRICT BLOCK GRANTS; REVISING THE USE OF THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; PROVIDING RULEMAKING AUTHORITY; REMOVING THE REQUIREMENT THAT

TRUSTEES SUBMIT TO ELECTORS THE PROPOSITION OF TRANSFERRING BUS DEPRECIATION RESERVE FUNDS TO ANOTHER FUND; REQUIRING A SCHOOL DISTRICT TO REPORT BUDGET AMENDMENTS TO THE LEGISLATURE AND THE BOARD OF PUBLIC EDUCATION; LIMITING A SCHOOL DISTRICT'S ENDING FUND BALANCE TO A SPECIFIC PERCENTAGE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-36-332, 20-3-363, 20-7-102, 20-7-1201, 20-9-104, 20-9-161, 20-9-201, 20-9-204, 20-9-208, 20-9-306, 20-9-308, 20-9-353, 20-9-507, 20-9-516, 20-9-630, AND 20-10-147, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE 1783

419 *(Senate Bill No. 423; Essmann)* ESTABLISHING THE MONTANA MARIJUANA ACT AND REVISING LAWS RELATING TO THE USE OF MARIJUANA; CREATING A REGISTRY PROGRAM FOR THE CULTIVATION, MANUFACTURE, TRANSPORTATION, AND TRANSFER OF MARIJUANA BY CERTAIN INDIVIDUALS; REQUIRING REPORTING; ALLOWING INSPECTIONS; REQUIRING LEGISLATIVE MONITORING; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING A TRANSITION PROCESS; AMENDING SECTIONS 37-1-316, 37-3-343, 37-3-347, 41-5-216, 45-9-203, 46-18-202, 50-46-201, 50-46-202, AND 61-11-101, MCA; REPEALING SECTIONS 50-46-101, 50-46-102, 50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-206, 50-46-207, AND 50-46-210, MCA; AND PROVIDING EFFECTIVE DATES 1807

HOUSE JOINT RESOLUTIONS ADOPTED

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1 *(Milburn)* URGING THE UNITED STATES CONGRESS AND THE PRESIDENT TO APPROVE FEDERAL LEGISLATION THAT WOULD RESULT IN THE IMMEDIATE REMOVAL OF THE GRAY WOLF FROM THE ENDANGERED SPECIES LIST IN MONTANA 1835

4 *(Peterson)* OPPOSING THE DESIGNATION OF NATIONAL MONUMENTS IN MONTANA WITHOUT THE CONSENT OF THE MONTANA LEGISLATURE AND THE GOVERNOR 1836

5 *(Regier)* CREATING MONTANANS WITH DEVELOPMENTAL DISABILITIES WEEK 1837

6 *(Connell)* ESTABLISHING FOREST PRODUCTS INDUSTRY WEEK . . 1839

8 *(Hunter)* REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE STUDY CHILDHOOD HUNGER IN MONTANA AND WAYS TO IMPROVE ACCESS TO NUTRITIOUS FOOD FOR ALL MONTANA CHILDREN 1839

13 *(Hansen)* REQUESTING A STUDY OF MONTANA'S INDIVIDUAL INCOME TAX SYSTEM AND OPTIONS TO REVISE THE INDIVIDUAL INCOME TAX 1841

17 *(Stahl)* URGING SUPPORT FOR EXTENDED HOURS AT THE MORGAN-MONCHY PORT OF ENTRY 1843

19 *(Furey)* RECOGNIZING THE MILITARY SERVICE OF MONTANANS IN THE ARMED FORCES OF THE UNITED STATES 1843

32 *(Connell)* REQUESTING AN INTERIM STUDY OF WAYS TO IMPROVE THE MANAGEMENT, RECOGNITION, AND COORDINATION OF

STATE PARKS AND OUTDOOR RECREATION AND HERITAGE RESOURCE PROGRAMS OPERATED BY THE STATE OF MONTANA 1844

33 *(MacLaren)* REQUESTING AN INTERIM STUDY ON THE IMPLICATIONS, OPTIONS, AND REPERCUSSIONS OF A HEALTH INSURANCE EXCHANGE IN THE STATE OF MONTANA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 63RD LEGISLATURE 1846

38 *(Hansen)* REQUESTING AN INTERIM STUDY OF LOCAL FIRE PROTECTION AND EMERGENCY SERVICE ENTITIES AND FIREFIGHTER AND EMERGENCY MEDICAL TECHNICIAN BENEFITS 1848

39 *(MacLaren)* REQUESTING AN INTERIM STUDY OF CERTAIN EXEMPTIONS FROM SUBDIVISION REVIEW 1849

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1 *(More)* ADOPTING THE HOUSE RULES 1850

2 *(Milburn)* URGING THE PRESIDENT OF THE UNITED STATES, THE DEPARTMENT OF DEFENSE, AND CONGRESS TO RECONSIDER THE PROPOSED RELOCATION OF THE F-15C/D MISSION OUT OF GREAT FALLS, MONTANA, CONDUCT AN IMPROVED ANALYSIS BASED ON ACTUAL DATA INSTEAD OF ASSUMPTIONS, AND RECONSIDER THE TOTAL CONTRIBUTIONS OF MONTANA AND BENEFITS TO THIS COUNTRY OF RETAINING THE F-15C/D MISSION IN MONTANA . . 1876

SENATE JOINT RESOLUTIONS ADOPTED

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1 *(Essmann)* ADOPTING THE JOINT LEGISLATIVE RULES 1879

4 *(Wittich)* URGING CONGRESS TO SUPPORT AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO REQUIRE A BALANCED FEDERAL BUDGET EXCEPT IN TIMES OF WAR 1896

6 *(Olson)* URGING THE UNITED STATES CONGRESS AND THE PRESIDENT OF THE UNITED STATES TO EXPEDITE THE FEDERAL LAND USE DECISION PROCESSES IN MONTANA, TO RECOGNIZE THE IMPORTANCE OF TRADITIONAL MULTIPLE RESOURCE USES ON FEDERAL LANDS, NOT TO IMPOSE RESTRICTIONS ON ADDITIONAL FEDERAL LAND OR MINERALS THAT WOULD PRECLUDE DEVELOPMENT, AND TO SUPPORT FEDERAL LEGISLATION PLACING CHECKS AND BALANCES ON THE PRESIDENT'S POWERS TO DECLARE NATIONAL MONUMENTS . . 1896

7 *(Brenden)* EXPRESSING OPPOSITION TO FEDERAL LEGISLATION THAT WOULD REDEFINE WHICH WATERS ARE SUBJECT TO THE FEDERAL WATER POLLUTION CONTROL ACT 1898

8 *(Hawks)* URGING THE BOARD OF REGENTS AND THE COMMISSIONER OF HIGHER EDUCATION TO STUDY THE GROWING DIVIDE BETWEEN RURAL AND URBAN COMMUNITIES AND PRESENT THE FINDINGS AND THE RECOMMENDATIONS OF THE STUDY TO THE LEGISLATURE'S EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE 1899

9 *(Hutton)* RELATING TO SUPPORT FOR THE PARENTAL RIGHTS AMENDMENT; AND URGING THE MEMBERS OF THE UNITED STATES CONGRESS TO SUBMIT THE PARENTAL RIGHTS AMENDMENT TO THE STATES FOR RATIFICATION 1900

10 *(Priest)* OPPOSING EFFORTS BY THE ENVIRONMENTAL PROTECTION AGENCY TO USE EXISTING FEDERAL LAWS TO REGULATE GREENHOUSE GAS EMISSIONS 1901

11 *(Peterson)* URGING THE MONTANA BOARD OF REGENTS OF HIGHER EDUCATION TO REQUIRE ONGOING POSTTENURE REVIEW FOR MONTANA UNIVERSITY TEACHERS; URGING THE BOARD OF REGENTS TO REQUIRE UNIVERSITY PRESIDENTS OR CHANCELLORS TO REPORT TO THE BOARD OF REGENTS ON THE POSTTENURE REVIEW PROCESS AT THEIR INSTITUTIONS; URGING THE BOARD OF REGENTS TO STUDY THE ADVANTAGES AND DISADVANTAGES OF POSTTENURE REVIEW; AND REQUESTING THE BOARD OF REGENTS TO REPORT TO THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE ON THE FINDINGS OF THE STUDY 1903

12 *(Walker)* URGING THE DEVELOPMENT AND PROMOTION OF POLICIES THAT PROMOTE THE RESPONSIBLE DEVELOPMENT OF OIL AND GAS LEASES ON FEDERAL LANDS 1905

14 *(Hawks)* ENCOURAGING IMPROVED COMMUNICATION BY THE DEPARTMENT OF LIVESTOCK WITH PRIVATE LANDOWNERS AFFECTED BY BISON CONTROL ACTIVITIES RELATED TO THE INTERAGENCY BISON MANAGEMENT PLAN 1905

15 *(Tutvedt)* REQUESTING AN INTERIM STUDY OF BONDING REQUIREMENTS RELATED TO AGRICULTURAL COMMODITIES. . 1906

17 *(Tutvedt)* REQUESTING AN INTERIM STUDY TO ANALYZE THE SYSTEM OF VALUING CENTRALLY ASSESSED PROPERTIES AND INDUSTRIAL COMPANIES ASSESSED ANNUALLY BY THE DEPARTMENT OF REVENUE; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 63RD LEGISLATURE 1907

18 *(Gillan)* REQUESTING AN INTERIM STUDY OF HEALTH CARE WORKFORCE NEEDS AND STRATEGIES FOR MEETING THOSE NEEDS 1908

20 *(Wittich)* REQUESTING A STUDY OF WAYS TO MAKE THE MONTANA MEDICAID PROGRAM MORE COST EFFECTIVE AND EFFICIENT . 1910

23 *(Essmann)* FOR AN INTERIM STUDY ON THE EXEMPTION OF NONPROFIT CORPORATIONS OR ORGANIZATIONS FROM PROPERTY TAXES AND OTHER TAXES 1912

26 *(Lewis)* RECOMMENDING INTERIM MONITORING ACTIVITIES BY LEGISLATIVE ADMINISTRATIVE AND INTERIM COMMITTEES AS RECOMMENDED BY THE JOINT SUBCOMMITTEES OF THE HOUSE APPROPRIATIONS AND SENATE FINANCE AND CLAIMS STANDING COMMITTEES 1913

27 *(Caferro)* REQUESTING AN INTERIM STUDY OF A MEDICAID WAIVER FOR SERVICES PROVIDED TO CHILDREN WITH DEVELOPMENTAL DISABILITIES 1916

28 *(Lake)* REQUESTING AN INTERIM STUDY OF PERFORMANCE-BASED FUNDING FOR K-12 EDUCATION, THE DEVELOPMENT OF A PERFORMANCE-BASED FUNDING DESIGN,

AND AN IMPLEMENTATION PLAN FOR CONSIDERATION BY THE 63RD LEGISLATURE 1917

29 *(Hinkle)* REQUESTING AN INTERIM STUDY ON RESTORATIVE JUSTICE FOR OFFENDERS; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 63RD LEGISLATURE 1918

30 *(Windy Boy)* REQUESTING AN INTERIM STUDY OF WAYS TO REDUCE CHILDHOOD HEALTH TRAUMA AND ITS LONG-TERM EFFECT ON CHILDREN 1920

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1 *(Essmann)* ADOPTING THE SENATE RULES 1922

2 *(Shockley)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE OF THE HONORABLE C. BRUCE LOBLE AS CHIEF WATER JUDGE OF THE STATE OF MONTANA 1941

3 *(Gillan)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE STATE TAX APPEAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE 1942

4 *(Steinbeisser)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, AND FEBRUARY 16, 2011, TO THE SENATE . . . 1942

5 *(Olson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE 1943

6 *(Shockley)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, AND MARCH 17, 2011, TO THE SENATE 1944

7 *(Barrett)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE HARD-ROCK MINING IMPACT BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE . . . 1946

8 *(Barrett)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE AIR POLLUTION CONTROL ADVISORY COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE 1947

9 *(Barrett)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE . . 1947

10 *(Barrett)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW

MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE . . . 1948

11 *(Barrett)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE . . . 1948

12 *(Barrett)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE . . . 1949

13 *(Zinke)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PUBLIC EDUCATION AND THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, AND FEBRUARY 16, 2011, TO THE SENATE . . . 1949

14 *(Brenden)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE 1950

15 *(Brenden)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE 1950

16 *(Facey)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA FACILITY FINANCE AUTHORITY, THE BOARD OF HOUSING, THE HUMAN RIGHTS COMMISSION, THE BOARD OF INVESTMENTS, THE BOARD OF LABOR APPEALS, THE RESEARCH AND COMMERCIALIZATION TECHNOLOGY BOARD, AND THE STATE COMPENSATION INSURANCE FUND BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, AND MARCH 17, 2011, TO THE SENATE 1951

17 *(Facey)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE STATE ELECTRICAL BOARD, THE BOARD OF PLUMBERS, THE BOARD OF PUBLIC ACCOUNTANTS, THE BOARD OF REAL ESTATE APPRAISERS, AND THE BOARD OF REALTY REGULATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, FEBRUARY 16, 2011, AND MARCH 17, 2011, TO THE SENATE 1952

18 *(Facey)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE TO THE STATE COMPENSATION INSURANCE FUND BOARD BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE . . . 1953

19 *(Facey)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF COMMERCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE 1953

20 *(Jones)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE TRANSPORTATION COMMISSION MADE

BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE . . . 1954

21 *(Olson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE 1954

22 *(Olson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE 1955

23 *(Olson)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE . . . 1955

24 *(Shockley)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF COUNTY PRINTING, THE BOARD OF HORSERACING, AND THE BOARD OF PARDONS AND PAROLE MADE BY THE GOVERNOR AND SUBMITTED IN WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE . . . 1956

25 *(Shockley)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 16, 2011, TO THE SENATE 1956

26 *(Facey)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE STATE BANKING BOARD, THE BOARD OF PLUMBERS, AND THE BOARD OF REALTY REGULATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, AND MARCH 30, 2011, TO THE SENATE 1957

27 *(Steinbeisser)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF HAIL INSURANCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED MARCH 30, 2011, TO THE SENATE. . . 1958

28 *(Buttrey)* URGING THE PRESIDENT OF THE UNITED STATES, THE DEPARTMENT OF DEFENSE, AND CONGRESS TO RECONSIDER THE PROPOSED RELOCATION OF THE F-15C/D MISSION OUT OF GREAT FALLS, MONTANA, CONDUCT AN IMPROVED ANALYSIS BASED ON ACTUAL DATA INSTEAD OF ASSUMPTIONS, AND RECONSIDER THE TOTAL CONTRIBUTIONS OF MONTANA AND BENEFITS TO THIS COUNTRY OF RETAINING THE F-15C/D MISSION IN MONTANA . . 1958

29 *(Priest)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, MARCH 17, 2011, AND MARCH 30, 2011, TO THE SENATE 1962

30 *(Murphy)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE HONORABLE DANIEL A. BOUCHER AS DISTRICT JUDGE OF THE TWELFTH JUDICIAL DISTRICT OF THE STATE OF MONTANA MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE 1964

31 *(Peterson)* ADOPTING THE CODE OF THE WEST AS THE MODEL CODE OF CONDUCT IN THE STATE OF MONTANA 1965

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Constitutional Initiative Page

105 AMENDING THE MONTANA CONSTITUTION TO PROHIBIT STATE OR LOCAL GOVERNMENTS FROM IMPOSING ANY NEW TAX ON TRANSACTIONS THAT SELL OR TRANSFER REAL PROPERTY . . . 1969

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161 ABOLISHING OUTFITTER-SPONSORED HUNTING LICENSES, REPLACING OUTFITTER-SPONSORED BIG GAME LICENSES WITH NONRESIDENT LICENSES, INCREASING NONRESIDENT LICENSE FEES, AND INCREASING FUNDING FOR HUNTING ACCESS AND HABITAT 1969

164 REDUCING THE ANNUAL INTEREST, FEES, AND CHARGES PAYDAY, TITLE, AND RETAIL INSTALLMENT LENDERS AND CONSUMER LOAN LICENSEES MAY CHARGE ON LOANS TO 36 PERCENT 1980

LAWS

Enacted by the

SIXTY-SECOND LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2011, through April 28, 2011

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE CURRENT AND SUBSEQUENT LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. (1) The following amounts are appropriated from the state general fund for fiscal years 2011, 2012, and 2013 for the operation of the 62nd legislature and the costs of preparing for the 63rd legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	$2,827,566
2. House of Representatives	4,609,477
3. Legislative Services Division	616,237

(2) The following amounts are appropriated from the state general fund for fiscal year 2013 for the initial costs of the 63rd legislature:

LEGISLATIVE BRANCH (1104)

1. Senate	$101,521
2. House	161,000
3. Legislative Services Division	7,663

Section 2. Effective date. [This act] is effective on passage and approval.

Approved January 31, 2011

CHAPTER NO. 2

[HB 22]

AN ACT EXTENDING THE SUNSET ON WIRELESS 9-1-1 FUNDING FOR LESS-POPULATED COUNTIES; AMENDING SECTION 10-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-313, MCA, is amended to read:

"10-4-313. Distribution of wireless enhanced 9-1-1 account by department. (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, ~~2011~~ *2015*:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive

less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, ~~2011~~ *2015*, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction in accordance with 10-4-311(3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, ~~2011~~ *2015*:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the counties with 1% or less than 1% of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (2)(a)(i) and (2)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, ~~2011~~ *2015*, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved February 18, 2011

CHAPTER NO. 3

[HB 21]

AN ACT CORRECTING AN ADJUSTED TAX RATE UNDER THE EXTENDED PROPERTY TAX ASSISTANCE PROGRAM FOR TAX YEAR 2014; AND AMENDING SECTION 15-6-193, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-193, MCA, is amended to read:

"15-6-193. Extended property tax assistance — phasein. (1) For the purpose of mitigating extraordinary market value increases during revaluation cycles that begin after December 31, 2008, the rate of taxation of qualified residences is adjusted in this section for properties with extraordinary increases in market value with owners that meet income requirements.

(2) An annual application on a form provided by the department is required to receive a tax rate adjustment under this section. The application must be signed under oath. A tax rate adjustment may be granted only for the current tax year and may not be granted for a previous year.

(3) A rate adjustment may not be granted for:

(a) any property that was sold or for which the ownership was changed after December 31 of the last year of the previous revaluation cycle unless the change in ownership is between husband and wife or parent and child with only nominal actual consideration or the change is pursuant to a divorce decree;

(b) the value of new construction, including remodeling, on the property occurring after December 31 of the last year of the previous revaluation cycle that is greater than 25% of the market value of the improvements; or

(c) a land use change occurring after December 31 of the last year of the previous revaluation cycle that increases the market value of the land by more than 25%.

(4) For the purposes of determining the adjustment in the class four property tax rate in this section, the following provisions apply for revaluation cycles beginning after December 31, 2008:

(a) The change in taxable value before reappraisal is the 2008 tax year value adjusted for any new construction or destruction that occurred in the 2008 tax year. The taxable value before reappraisal for the 2009 tax year and subsequent years is the same as the 2008 tax year value if no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes are made to the property during 2008 or subsequent tax years.

(b) The percentage increase in taxable value is measured as the percentage change in taxable value before reappraisal to the taxable value after reappraisal. The taxable value before reappraisal is calculated by multiplying the value before reappraisal in 2009 times 0.66 times 0.0301. The taxable value after reappraisal is calculated by multiplying the 2009 market value after reappraisal times 0.53 times 0.0247.

(c) The dollar increase in tax liability is measured as the change in tax liability before reappraisal to the tax liability after reappraisal. The tax liability before reappraisal is calculated by multiplying the value before reappraisal in

2009 times 0.66 times 0.0301 times the tax year 2008 mill levy applied to the property. The tax liability after reappraisal is calculated by multiplying the 2009 market value after reappraisal times 0.53 times 0.0247 times the tax year 2008 mill levy applied to the property. The tax year 2008 mill levy is the total of all mills applied to the property for fiscal year 2009.

(d) Total household income is the sum of the income of all members of the household and all other persons who are owners of the property. Income, as used in this section, includes income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before deducting depreciation or depletion allowance, or both. For an entity, as defined in subsection (8), income also includes the income of any natural person or entity that is a trustee of or controls 25% or more of the entity. A household is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. For single-family rental dwellings, total household income does not include the income of the tenant.

(e) The phase-in value is the valuation change made pursuant to 15-7-111(3) since the last reappraisal.

(5) (a) If total household income is $25,000 or less, the percentage increase in taxable value is greater than 24%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2009, the tax rate is 0.03269 times the value before reappraisal divided by the 2009 phase-in value.

(ii) For tax year 2010, the tax rate is 0.03546 times the value before reappraisal divided by the 2010 phase-in value.

(iii) For tax year 2011, the tax rate is 0.03823 times the value before reappraisal divided by the 2011 phase-in value.

(iv) For tax year 2012, the tax rate is 0.04115 times the value before reappraisal divided by the 2012 phase-in value.

(v) For tax year 2013, the tax rate is 0.04374 times the value before reappraisal divided by the 2013 phase-in value.

(vi) For tax year 2014 and after, the tax rate is 0.04648 times the value before reappraisal divided by the 2014 phase-in value.

(b) If total household income is greater than $25,000 but less than or equal to $50,000, the percentage increase in taxable value is greater than 30%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2009, the tax rate is 0.03301 times the value before reappraisal divided by the 2009 phase-in value.

(ii) For tax year 2010, the tax rate is 0.03612 times the value before reappraisal divided by the 2010 phase-in value.

(iii) For tax year 2011, the tax rate is 0.03925 times the value before reappraisal divided by the 2011 phase-in value.

(iv) For tax year 2012, the tax rate is 0.04257 times the value before reappraisal divided by the 2012 phase-in value.

(v) For tax year 2013, the tax rate is 0.0456 times the value before reappraisal divided by the 2013 phase-in value.

(vi) For tax year 2014 and after, the tax rate is 0.04873 times the value before reappraisal divided by the 2014 phase-in value.

(c) If total household income is greater than $50,000 but less than or equal to $75,000, the percentage increase in taxable value is greater than 36%, and the dollar increase in taxable liability is $250 or greater, then the property qualifies for an adjusted tax rate as follows:

(i) For tax year 2009, the tax rate is 0.03332 times the value before reappraisal divided by the 2009 phase-in value.

(ii) For tax year 2010, the tax rate is 0.03678 times the value before reappraisal divided by the 2010 phase-in value.

(iii) For tax year 2011, the tax rate is 0.04028 times the value before reappraisal divided by the 2011 phase-in value.

(iv) For tax year 2012, the tax rate is 0.04399 times the value before reappraisal divided by the 2012 phase-in value.

(v) For tax year 2013, the tax rate is 0.04739 times the value before reappraisal divided by the 2013 phase-in value.

(vi) For tax year 2014 and after, the tax rate is ~~0.0598~~ *0.05098* times the value before reappraisal divided by the 2014 phase-in value.

(d) The adjusted tax rate computed under this subsection (5) must be rounded to the nearest 1/100 of 1%.

(6) A person who applies for a tax rate adjustment under this section shall provide the department with documentation of total household income and other information that the department considers necessary to determine the person's eligibility for the tax rate adjustment. Documents provided to the department to determine eligibility for a tax rate adjustment are subject to the confidentiality provisions in 15-30-2618.

(7) A person who applies for a tax rate adjustment and submits a false or fraudulent application for a tax rate adjustment is guilty of false swearing under 45-7-202.

(8) For the purposes of this section:

(a) "entity" means:

(i) a corporation, fiduciary, or pass-through entity, as those terms are defined in 15-30-2101; and

(ii) an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person; and

(b) "qualified residence" means any class four residential dwelling in Montana that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling actually occupied by itself or in combination with another class four residential dwelling in Montana for at least 7 months a year."

Approved February 23, 2011

CHAPTER NO. 4

[HB 60]

AN ACT ELIMINATING THE APPOINTMENT OF A SUPERVISOR OF MOTOR CARRIERS BY THE PUBLIC SERVICE COMMISSION; AND AMENDING SECTION 69-12-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-203, MCA, is amended to read:

"69-12-203. ~~Supervisor of motor carriers~~ *Field inspectors.* ~~(1) The commission shall appoint a supervisor of motor carriers who has general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor must be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. The supervisor shall serve at the pleasure of the commission and at an annual salary to be set by the commission.~~

~~(2) The supervisor shall direct all enforcement activities on behalf of the commission, including the investigation and prosecution of violations of this chapter or the rules or orders prescribed under this chapter by the commission.~~

~~(3) The supervisor and whatever~~ *The commission may employ* field inspectors ~~may be employed by the commission to assist the supervisor are considered~~ *to investigate and enforce the provisions of this chapter. Field inspectors employed by the commission are* peace officers for the purpose of making arrests in connection with violations of this chapter and issuing summonses, accepting bail, and serving warrants of arrest. The ~~supervisor and~~ field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo, driver, routing, or ownership of the vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12."

Approved February 23, 2011

CHAPTER NO. 5

[HB 54]

AN ACT DEFINING "ORDER" AND "PROGRAM" WITH RESPECT TO ORDERS ISSUED BY THE DEPARTMENT OF LIVESTOCK THAT IT CONSIDERS NECESSARY OR PROPER TO PREVENT THE INTRODUCTION OR SPREADING OF INFECTIOUS, CONTAGIOUS, COMMUNICABLE, OR DANGEROUS DISEASES AFFECTING LIVESTOCK AND ALTERNATIVE LIVESTOCK IN THIS STATE; AMENDING SECTION 81-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-2-102, MCA, is amended to read:

"81-2-102. Powers of department. (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by livestock and that in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules that are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of

prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect fees that the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees, the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees must be deposited in the state special revenue fund for the use of the animal health functions of the department.

(d) subject to subsection (2), adopt rules and orders that it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock in this state ~~and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock and alternative livestock intended for importation into this state before it may be imported into this state~~;

(e) *(i)* adopt rules and orders that it considers necessary or proper for the inspection, testing, and quarantine of all livestock and alternative livestock imported into this state; *and*

(ii) adopt rules and orders that it considers necessary or proper governing inspections and tests of livestock and alternative livestock intended for importation into this state to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock;

(f) adopt rules and orders that it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of 81-9-201, 81-20-101, 81-21-102, 81-21-103, part 1, 2, or 3 of this chapter, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement.

(g) adopt rules and orders that seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable, the standards approved by the United States department of agriculture must be adopted.

(h) install an adequate system of meat inspection in accordance with 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 that must provide ways and means for shipping home-grown and home-killed meats into any city

in this state. As far as practicable, the rules must conform with the meat-inspection requirements of the United States department of agriculture.

(i) slaughter or cause to be slaughtered any livestock in this state known to be affected with or that has been exposed to an infectious, contagious, communicable, or dangerous disease, when the slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under 81-20-101, 81-21-102, 81-21-103, or part 1, 2, or 3 of this chapter;

(k) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) (a) As used in subsection (1)(d), "order" means a command, direction, or instruction issued by the department, board, or board's administrator in circumstances that clearly constitute an existing imminent peril to the public health, safety, or welfare or to animal health or welfare.

(b) An order under subsection (1)(d) may last no more than 5 years and may be altered or rescinded as necessary to address the circumstances set out in subsection (1)(d). An order may not be used to create a permanent program.

(c) As used in subsection (2)(b), "program" means a legislatively or administratively created function, project, or duty of an agency.

~~(2)~~(3) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 11, 2011

CHAPTER NO. 6

[HB 89]

AN ACT TO ELIMINATE LOCAL REGISTRATION AND DISCLOSURE FILING FOR STATE DISTRICT AND STATEWIDE CANDIDATES; AND AMENDING SECTIONS 13-37-225 AND 13-37-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-225, MCA, is amended to read:

"13-37-225. Reports of contributions and expenditures required. (1) Except as provided in 13-37-206, each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. ~~All~~ *Except as provided in subsection (3), all* reports required by this chapter must be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of

all reports must be filed with the election administrator of the county in which the election is to be held or, if the election is to be held in more than one county, with the election administrator in the county that the commissioner specifies.

(2) In lieu of all contribution and expenditure reports required by this chapter, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States and their political committees pursuant to the requirements of federal law.

(3) Reports required by this chapter for candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or for a district court judge, and candidates for a state office filled by a statewide vote must be filed with the commissioner and do not have to be filed with the election administrator of a county."

Section 2. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports electronically as follows:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March, April, July, August, and September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $200 or more if received between the 10th day before the election and the day of the election;

(e) not more than 20 days after the date of the election; and

(f) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which the text of the proposed ballot issue is submitted for review and approval pursuant to 13-27-202 during the year or years prior to the election year that an issue is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September in each year that an election is to be held;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 12th day preceding the date on which an election is held;

(b) within 48 hours after receiving a contribution of $100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(b) must be made by mail or by electronic communication to the commissioner ~~and the election administrator of the appropriate county~~ pursuant to 13-37-225.

(c) not more than 20 days after the date of the election; and

(d) whenever a candidate or political committee files a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees that are specifically organized to support or oppose a particular local issue shall file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee that is not specifically organized to support or oppose a particular candidate or ballot issue and that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file:

(a) a report on the 12th day preceding the date of an election in which it participates by making an expenditure;

(b) a report within 24 hours of making an expenditure or incurring a debt or obligation of $500 or more for election material described in 13-35-225(1) if made between the 17th day before the election and the day of the election;

(c) a report not more than 20 days after the date of the election in which it participates by making an expenditure; and

(d) a report on a date to be prescribed by the commissioner for a closing report at the close of each calendar year.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) Except as provided in subsections (1)(d), (2)(d), (3)(b), and (5)(b), all reports required by this section must be complete as of the fifth day before the date of filing as specified in 13-37-228(2) and this section."

Approved March 11, 2011

CHAPTER NO. 7

[HB 19]

AN ACT CLARIFYING THAT SMOKING FOR THE PURPOSES OF THE MONTANA CLEAN INDOOR AIR ACT INCLUDES THE SMOKING OF MARIJUANA FOR MEDICAL USE; AMENDING SECTION 50-40-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by

guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:

(a) restaurants;

(b) stores;

(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

(e) health care facilities;

(f) auditoriums, arenas, and assembly facilities;

(g) meeting rooms open to the public;

(h) bars;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

(4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

(6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(7) "Place of work" means an enclosed room where one or more individuals work.

(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product*, including marijuana intended for medical use as provided for in Title 50, chapter 46*."

Section 2. Coordination instruction. (1) If House Bill No. 161 is passed and approved, then [this act] is void.

(2) If House Bill No. 175 is passed by the electorate in 2012, then [this act] is void on [the effective date of House Bill No. 175].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2011

CHAPTER NO. 8

[HB 38]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~May 5, 2009~~ *[the effective date of this act]*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2011

CHAPTER NO. 9

[HB 44]

AN ACT REPEALING THE MONTANA CAPITAL COMPANY ACT; AMENDING SECTIONS 17-6-302, 17-6-311, 17-6-312, 17-6-313, 30-10-105, AND 32-1-422, MCA; AND REPEALING SECTIONS 90-8-101, 90-8-102, 90-8-103, 90-8-104, 90-8-105, 90-8-106, 90-8-201, 90-8-202, 90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303, 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-302, MCA, is amended to read:

"17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

~~(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.~~

~~(3)~~*(2)* "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

~~(4)~~*(3)* "Department" means the department of commerce provided for in 2-15-1801.

~~(5)~~*(4)* "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

~~(6)~~*(5)* "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

~~(7)~~*(6)* "Intermediary loan" means a loan provided to a local economic development organization with a revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.

~~(8)~~*(7)* "Loan participation" means loans or portions of loans bought from a financial institution ~~and does not include the purchase of debentures issued by a capital company~~.

~~(9)~~*(8)* "Local economic development organization" means:

(a) (i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

(ii) an entity certified by the department under 90-1-116; or

(iii) an entity established by a local government; and

(b) an entity actively engaged in economic development and business assistance work in the area.

~~(10)~~*(9)* "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana.

~~(11)~~*(10)* "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenue in the future to the people of Montana, either directly or indirectly.

~~(12)~~*(11)* "Montana economy" means any business activities in the state of Montana, including those that continue existing jobs or create new jobs in Montana.

~~(13)~~*(12)* "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

Section 2. Section 17-6-311, MCA, is amended to read:

"17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:

(a) apply to a loan made pursuant to 17-6-317;

(b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2)~~;~~

~~(c) apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase~~.

(2) The total amount of loans made pursuant to 17-6-309(2) may not exceed $80 million, the total amount of loans made pursuant to 17-6-317 may not exceed $70 million, and a single loan may not be less than $250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed $16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

(e) other matters that the board considers necessary."

Section 3. Section 17-6-312, MCA, is amended to read:

"17-6-312. State participation in loans. (1) Subject to 17-6-311, state participation in any loan to a business enterprise, except for a loan made pursuant to 17-6-317 or guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

~~(2) The purchase of debentures issued by a capital company is not a loan participation and is not subject to subsection (1).~~

~~(3)~~*(2)* State participation in loans to nonprofit corporations may qualify for the job credit interest rate reductions under 17-6-318 if the interest rate reduction passes through to a for-profit business creating the jobs."

Section 4. Section 17-6-313, MCA, is amended to read:

"17-6-313. Prior commitment of funds. The board may authorize the commitment of funds to financial institutions ~~and capital companies~~ pursuant to rules adopted by the board, but the determination as to credit with respect to individual investments must be made by the financial institution and the board ~~or the capital company and the board~~."

Section 5. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions — rulemaking. Except as expressly provided in this section, 30-10-201 through 30-10-207 and 30-10-211 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold ~~(~~or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities~~)~~ are reported by the automated quotations system operated by the national association of securities dealers, inc., or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has not been a default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has not been a default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1

through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons, ~~(~~other than those designated in subsection (7)~~)~~, during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer. However, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) a transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) a transaction pursuant to an offer made in this state by an offeror that is used in conjunction with the exemption found in subsection (8)(a) and the offeror has applied to the commissioner to use the exemption found in subsection (8)(b) in conjunction with or in addition to the exemption in subsection (8)(a), which the commissioner may allow if:

(i) the offeror has its corporate headquarters or principal place of business in this state;

(ii) the seller reasonably believes that all the buyers are purchasing for investment;

(iii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; however, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iv) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in addition to the offers made pursuant to subsection (8)(a) and pays a filing fee that must accompany the application for approval. The commissioner may deny the application.

(d) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees are then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed ~~(~~or at any post office in this state in the case of a mailed offer~~)~~.

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration, ~~(~~other than a standby commission~~)~~, is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the distribution other than the surrender of a right to a cash dividend when the security holder can elect to take a dividend in cash or in securities;

(14) a transaction incident to a right of conversion, a statutory or judicially approved reclassification, or a recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 and 30-10-211 apply to any transactional exemptions adopted by rule.

~~(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company, as defined in 90-8-104, if the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.~~

~~(17)~~*(16)* the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

~~(18)~~*(17)* a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

~~(19)~~*(18)* a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection ~~(19)(b)~~ *(18)(b)*, to be physically located within Montana at all times after the 7-day delivery period provided in subsection ~~(19)(b)~~ *(18)(b)*, and the precious metals are in fact physically located within Montana at all times after that delivery period;

~~(20)~~*(19)* a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

~~(21)~~*(20)* an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code; or

~~(22)~~*(21)* (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15 or 17, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15 or 17, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection ~~(22)~~ *(21)* unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 or 17, for the purposes of this subsection ~~(22)~~ *(21)*."

Section 6. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock — rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of its capital or surplus or money of its depositors, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock purchased or acquired to prevent the loss must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank and a federal home loan bank, without limitation of amount; *and*

~~(c) shares of stock in a Montana capital company or a Montana small business investment capital company within limits prescribed by the Montana Capital Company Act; and~~

~~(d)~~*(c)* shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar

needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113, that makes investments for similar public welfare purposes.

(5) The department shall adopt rules to implement this section. The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency."

Section 7. Repealer. The following sections of the Montana Code Annotated are repealed:

90-8-101. Short title.
90-8-102. Declaration of policy.
90-8-103. Purpose.
90-8-104. Definitions.
90-8-105. Rulemaking.
90-8-106. Fees.
90-8-201. Certification of Montana capital companies and small business investment capital companies.
90-8-202. Designation of qualified Montana capital companies — designation of qualified Montana small business investment capital company — tax credit.
90-8-203. No recapture — unqualified investments — penalty.
90-8-204. Application requirements.
90-8-205. State liability disclaimed.
90-8-301. Qualified investments — penalty — extension permissible.
90-8-302. Restriction on investment.
90-8-303. Conflict of interest.
90-8-304. Application of securities law.
90-8-305. Sale of debentures.
90-8-311. Legislative review and oversight.
90-8-312. Investment reporting and recordkeeping.
90-8-313. Examination.
90-8-321. Decertification.

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 16, 2011

CHAPTER NO. 10

[HB 57]

AN ACT ALLOWING INFORMAL SERVICE OF PROCESS IN BOARD OF PERSONNEL APPEALS PROCEEDINGS; AND AMENDING SECTION 39-31-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-107, MCA, is amended to read:

"39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter ~~shall~~ *may* be served ~~as provided by the rules of civil procedure~~ *by depositing it in the U.S. mail, postage prepaid*."

Approved March 16, 2011

CHAPTER NO. 11

[HB 74]

AN ACT ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LOCATE, CONTACT, AND SHARE INFORMATION WITH EXTENDED FAMILY MEMBERS UPON PLACEMENT OF CHILDREN IN OUT-OF-HOME CARE; AMENDING SECTIONS 41-3-301 AND 41-3-427, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical custody of the youth of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

~~(5)~~*(6)* If a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

~~(6)~~*(7)* Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

~~(7)~~*(8)* If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

~~(8)~~*(9)* The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 2. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services — order — service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable

cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(d) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with a social worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) the right for the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;

~~(c)~~*(d)* a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

~~(d)~~*(e)* a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

~~(e)~~*(f)* a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

~~(f)~~*(g)* a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

~~(g)~~*(h)* any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2011

CHAPTER NO. 12

[HB 84]

AN ACT GENERALLY REVISING LABOR LAW; PROVIDING THAT THE DEFINITION OF "EMPLOYEE" DOES NOT INCLUDE AN INDEPENDENT CONTRACTOR WITH RESPECT TO GENERAL OBLIGATIONS OF EMPLOYERS; PROVIDING THAT THE DEPOSIT OF CERTAIN WAGES INTO THE WAGE COLLECTION FUND BY THE COMMISSIONER OF LABOR IS DISCRETIONARY RATHER THAN MANDATORY; UPDATING THE REFERENCE TO FEDERAL LAW WITH RESPECT TO THE DEFINITION OF A PERSON IN AN OUTSIDE SALES CAPACITY; AND AMENDING SECTIONS 39-3-201, 39-3-213, AND 39-3-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-201, MCA, is amended to read:

"39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by the director, commissioner, or chief for the purpose of this part.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

(3) "Employ" means to permit or suffer to work.

(4) "Employee" includes any person who works for another for hire*, except that the term does not include a person who is an independent contractor*.

(5) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States.

(6) (a) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and gratuities that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection (6), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement."

Section 2. Section 39-3-213, MCA, is amended to read:

"39-3-213. Disposition of wages. (1) The commissioner of labor ~~shall~~ *may* deposit wages collected under parts 2 and 4 of this chapter into the wage collection fund and *with respect to wages deposited into the fund* shall attempt to make payment of wages to the entitled person. Wages deposited into the wage collection fund do not bear interest. The wage collection fund is an agency fund as provided in 17-2-102(3)(d). The payment of wages collected may be made by means of state warrants.

(2) A warrant issued pursuant to subsection (1) that remains unclaimed for more than 6 months from the date of issuance must be returned to the state treasurer to be stale-dated in accordance with 17-8-303."

Section 3. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity~~, as defined in 29 CFR 541.5~~ *pursuant to 29 CFR 541.500*;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's office who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Approved March 16, 2011

CHAPTER NO. 13

[HB 101]

AN ACT GENERALLY REVISING LAWS RELATING TO WATER AND SEWER DISTRICTS AND REGIONAL WATER AUTHORITIES; REQUIRING THE BOARD OF DIRECTORS TO CAUSE AN AUDIT TO BE MADE; ELIMINATING THE POSITION OF AUDITOR; ALLOWING THE OPERATOR OF A DISTRICT TO BE ASSIGNED THE DUTIES OF THE GENERAL MANAGER; CLARIFYING THE JOINT EXERCISE OF POWERS BY REGIONAL WATER AUTHORITIES; AMENDING SECTIONS 7-13-2221, 7-13-2277, 7-13-2278, 7-13-2279, AND 75-6-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2221, MCA, is amended to read:

"7-13-2221. Powers related to district finances — *audits.* *(1)* Any district incorporated as provided in this part may:

~~(1)~~*(a)* accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water or sewer development projects;

~~(2)~~*(b)* cooperate and contract with the state or federal government or any department or agency of the state or federal government in furnishing assurances for and meeting local cooperation requirements of any project involving control, conservation, and use of water;

~~(3)~~*(c)* borrow money and incur indebtedness and issue bonds or other evidence of indebtedness and refund or retire any indebtedness or lien that may exist against the district or property of the district;

~~(4)~~*(d)* cause taxes to be levied in the manner provided for in part 23 and this part for the purpose of paying any obligation of the district and to accomplish the purposes of part 23 and this part in the manner provided in part 23 and this part;

~~(5)~~*(e)* levy special assessments against property located in the district and benefited by any of its improvements, as provided in 7-13-2280 through 7-13-2289, and pledge the collections of the special assessments in whole or in

part, with any other revenue of the district, to the payment of bonds issued pursuant to part 23; and

~~(6)~~*(f)* enter into covenants and agreements as to the establishment and maintenance of reasonable rates and charges for the use of its systems or improvements or any part of the systems or improvements as required, in the judgment of the board of directors, for the favorable sale of bonds issued pursuant to part 23, including, without limitation, a covenant to establish and maintain rates and charges sufficient, with the collection of any special assessments, to pay debt service and operating, maintenance, and replacement costs of the system or improvement and fund necessary reserves or a covenant to establish and maintain rates and charges sufficient, with the collection of any special assessments, to pay operating and maintenance costs of the system or improvement, fund necessary reserves for the system or improvement, and pay debt service on bonds and to provide additional funds necessary for the purposes of the system or improvement or to provide assurance to the holders of bonds as to the sufficiency of the revenue.

(2) The board of directors shall cause an audit of the financial records of the district to be made in compliance with the requirements of Title 2, chapter 7, part 5, at the expense of the district."

Section 2. Section 7-13-2277, MCA, is amended to read:

"7-13-2277. Appointment of administrative personnel. (1) The board of directors shall, at its first meeting or as soon thereafter as practicable, appoint by a majority vote a general manager~~,~~ *and* a secretary~~, and an auditor~~. ~~No~~ *A* director ~~shall~~ *may not* be ~~eligible to the office of~~ *the* general manager~~,~~ *or the* secretary~~, or auditor~~. *The board of directors may assign the district's operator, as defined in 37-42-102, the additional duties of a general manager.*

(2) The general manager~~,~~ *and* secretary~~, and auditor shall~~ *must* receive ~~such~~ *the* compensation ~~as~~ *that* the board ~~shall determine~~ *determines*, and each shall serve at the pleasure of the board."

Section 3. Section 7-13-2278, MCA, is amended to read:

"7-13-2278. Duties of administrative personnel. (1) The general manager has full charge and control of the maintenance, operation, and construction of all works and systems of the district, with full power and authority to employ and discharge all employees and assistants at pleasure and prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall *ensure that the district establishes and maintains a system of auditing and accounting that shows the financial condition of the district, draw or cause the secretary to draw warrants to pay demands made against the district that have been first approved by at least three members of the board and the general manager, and* perform other duties that may be imposed by the board. The general manager shall report to the board in accordance with rules that it may adopt.

(2) The secretary shall countersign all contracts on behalf of the district and perform other duties that may be imposed by the board.

~~(3) The auditor is charged with the duty of installing and maintaining a system of auditing and accounting that must completely and at all times show the financial condition of the district. The auditor shall draw warrants to pay demands made against the district when the demands have been first approved by at least three members of the board and by the general manager.~~"

Section 4. Section 7-13-2279, MCA, is amended to read:

"7-13-2279. Performance bonds for administrative personnel. The general manager, secretary, ~~and auditor~~ and all other employees or assistants of ~~said~~ *the* district who may be required to do so by the board of directors shall give bonds to the district, conditioned for the faithful performance of their duties, as the board from time to time may provide."

Section 5. Section 75-6-305, MCA, is amended to read:

"75-6-305. Joint exercise of powers by certain public agencies — agreements among agencies — filing of agreement — prohibition against competition — retirement of bonds — *consent of public agency*. (1) Any powers, privileges, or authority of a public agency of this state relating to public water supplies or the transportation or treatment of wastewater may be exercised jointly with any other public agency of this state or with any agency of the United States to the extent that the laws of the United States permit. An agency of the state government when acting jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by this part upon a public agency.

(2) A public agency may enter into agreements with one or more other public agencies for the purpose of organizing an authority. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies is necessary before any agreement may take effect.

(3) An agreement must specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of the authority created, together with the powers delegated to the authority;

(c) its purpose or purposes;

(d) the manner of financing for the authority and of establishing and maintaining a budget for the authority;

(e) the permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(f) the manner of acquiring, holding, and disposing of real and personal property of the authority; and

(g) any other necessary and proper matters.

(4) An agreement may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if the terms of the agreement are not changed. Otherwise, a new agreement with the new public agency must be made. When only two public agencies form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies.

(5) Prior to taking effect, an agreement made under this part must be filed with the clerk of the county commission of each county in which a member of the authority is located and the agreement then must also be filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the county or counties where filed, stating that the agreement has been filed in that county.

(6) A public agency that enters into an agreement made under this part may not offer or provide water or wastewater services in competition with another public agency entering into the agreement.

(7) A public agency that enters into an agreement made under this part may not withdraw from the agreement until the outstanding bonded indebtedness of the authority is retired or the bondholders are otherwise protected.

(8) (a) An authority may not provide water or wastewater services to end users located within the jurisdiction of a public agency that owns or operates a community water system or a public sewage system, as those terms are defined in 75-6-102, without the consent of the governing body of the public agency through the adoption of a resolution or ordinance.

(b) The governing body may not adopt a resolution or ordinance without first holding a public hearing. The hearing must address relevant factors relating to the provision of the water or wastewater services, including but not limited to the scope of the proposed service, rates and charges, the indebtedness of the public agency and the authority, and the rights and obligations of the persons or entities to be served. Notice must be given as provided in 7-1-2121 or 7-1-4127.

(c) For purposes of this subsection (8), "governing body" means the council, commission, board of directors, or other legislative body charged with governing the public agency."

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective July 1, 2011.

Approved March 16, 2011

CHAPTER NO. 14

[HB 204]

AN ACT ALLOWING ANY SCHOOL BOARD TRUSTEE OF CERTAIN DISTRICTS TO PRESIDE OVER THE BOARD; RESTRICTING AN ADDITIONAL TRUSTEE FROM VOTING ON ISSUES RELATED ONLY TO AN ELEMENTARY SCHOOL DISTRICT; AND AMENDING SECTIONS 20-3-321, 20-3-332, 20-3-351, AND 20-3-352, MCA.

WHEREAS, if the boundaries of an elementary school district and a high school district do not coincide, then high school additional trustees may be elected from areas outside of the elementary school district boundaries to serve on the high school board of trustees along with their elementary school trustee counterparts who also serve as trustees for the high school district; and

WHEREAS, the boards of trustees of school districts may combine their governance into a single school board and merge the administration of their school districts for purposes of economy and efficiency; and

WHEREAS, a combined school board may wish to elect a high school additional trustee as its presiding officer because of that person's valuable knowledge and experience; and

WHEREAS, current state law may not allow high school additional trustees to serve as the presiding officers of combined school boards because they are not members of the elementary district school board; and

WHEREAS, an elementary school district's integrity of governance on a combined school board can be protected by restricting a presiding officer who is a high school additional trustee from voting on matters that pertain only to the elementary school district.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-321, MCA, is amended to read:

"20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees, but not later than the third Saturday of May. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer.

(3) The presiding officer of a board of trustees of an elementary district may be any trustee of the board, including an additional trustee as provided for in 20-3-352(2). If an additional trustee is chosen to serve as the presiding officer of the board of trustees of an elementary district described in 20-3-351(1)(a), the additional trustee may not vote on issues pertaining only to the elementary district."

Section 2. Section 20-3-332, MCA, is amended to read:

"20-3-332. Personal immunity of trustees. (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from suit for damages, as provided in 2-9-305.

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office.

(3) An additional trustee, as provided for in 20-3-352(2), who is chosen as a nonvoting presiding officer of the board of trustees of an elementary district is entitled to all of the immunization, defenses, and indemnifications described in subsection (1) of this section."

Section 3. Section 20-3-351, MCA, is amended to read:

"20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, if there is more than one elementary district in which the operating high school buildings are located, the trustees of the elementary district in which the operating high school building that was first constructed is located; and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school.

(3) An additional trustee may be elected as the presiding officer of a high school district but may not vote on issues pertaining only to the elementary district. The additional trustee, as the presiding officer of the board, has all other powers, protections, and obligations of a presiding officer of an elementary district, including those under 2-3-203."

Section 4. Section 20-3-352, MCA, is amended to read:

"20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee. (1) As provided in 20-3-351(1)(b), a high school district, except a county high school district, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without equitable representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of additional trustee positions under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).

(2) A request for additional trustee positions must be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district that has its trustees placed on the high school trustees must be divided by the number of positions on the trustees of the elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) must be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) must be divided by the taxable valuation per trustee position calculated in subsection (2)(a). The resulting quotient must be rounded off to the nearest whole number, except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).

(d) Except for a nonvoting trustee position, the number determined in subsection (2)(c) must be the number of additional trustee positions, except that the number of additional trustee positions may not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district that has its trustees placed on the high school district trustees. When this situation exists, three additional trustees must be elected from the elementary school districts in which the high school is not located and one additional trustee must be elected at large in the high school district.

(e) An additional trustee may serve as the presiding officer of the board of trustees of an elementary district in accordance with 20-3-321(3).

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school

district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing one of the following alternative methods of electing the members of the high school district board of trustees:

(i) one trustee must be elected from each elementary school district with territory included in the high school district and two or three trustees must be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees; or

(ii) the county superintendent shall establish four trustee nominating districts within the high school district but outside the territory of the elementary school district in which the high school buildings are located. One trustee must be elected from each trustee nominating district and three trustees must be elected from the elementary district in which the high school buildings are located, for a total of seven trustees on the high school district board of trustees. Trustees elected from the elementary district in which the high school buildings are located shall serve on both the high school district board of trustees and on the elementary school district board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school district board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among 1-, 2-, and 3-year terms.

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period."

Approved March 16, 2011

CHAPTER NO. 15

[HB 208]

AN ACT REQUIRING LOCAL EDUCATIONAL AGENCIES TO PROVIDE CERTAIN STUDENT RECORD INFORMATION TO THE MONTANA YOUTH CHALLENGE PROGRAM ON A SEMIANNUAL BASIS; PROVIDING WRITTEN NOTICE TO A PARENT OR GUARDIAN OF THE INTENDED DISCLOSURE OF THE STUDENT RECORD INFORMATION; PROVIDING FOR AN OPPORTUNITY TO OBJECT TO THE DISCLOSURE; AMENDING SECTION 20-1-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-213, MCA, is amended to read:

"20-1-213. Transfer of school records. (1) Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as

amended, and its implementing regulations at 34 CFR, part 99, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies and accredited schools shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request.

(2) If records cannot be forwarded within 5 days, the local educational agency or accredited school shall notify the requestor in writing or electronically providing the reasons why the local educational agency or accredited school is unable to comply within the 5-day timeframe and the local educational agency or accredited school shall provide the date by which the requested records will be transferred.

(3) A local educational agency or accredited school may not refuse to transfer files because a student owes fines or fees.

(4) The files that are forwarded must include education records in the permanent file, special education records, and any disciplinary actions taken against the student that are educationally related.

(5) A local educational agency or accredited school may release student information to the juvenile justice system to assist the system's ability to effectively serve, prior to adjudication, the student whose records are released under provisions of 20 U.S.C. 1232g(B)(1)(E) of the Family Educational Rights and Privacy Act of 1974, as amended. The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student.

(6) The superintendent of public instruction is encouraged to contact other states or provinces and may enter into reciprocal records transfer agreements with the superintendent of public instruction or a department of education of any state or province. The superintendent of public instruction shall supply a copy of any reciprocal records transfer agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(7) Upon request, the local educational agency or accredited school shall transfer by mail or electronically a copy of the permanent file to a nonpublic school or facility.

(8) (a) By November 1 and March 1 of each school fiscal year, a local educational agency shall prepare a report to be provided to the director of the Montana youth challenge program subject to subsections (8)(b) and (8)(c) containing the name, last-known address, and dates of attendance of a student who:

(i) is at least 16 years of age but less than 19 years of age;

(ii) was enrolled but is no longer enrolled in a school in the district;

(iii) has not provided school transfer or graduation information to a school in the district; and

(iv) has not received a high school diploma or general educational development certificate.

(b) After preparing the report in accordance with subsection (8)(a), a local educational agency shall provide written notice to the parent or guardian of the student or to the student if the student is at least 18 years of age or is under 18

years of age and emancipated that the agency intends to provide the report to the director of the Montana youth challenge program. The parent or guardian or the student must be given the opportunity to object to the planned disclosure of the information. If the parent or guardian or the student fails to respond to the notice within 30 days, the local educational agency shall forward the report to the director of the Montana youth challenge program.

(c) The report provided by the local educational agency may not include a student who:

(i) is receiving medical care or treatment that prohibits school attendance;

(ii) is enrolled in a foreign exchange program;

(iii) is enrolled in an early admissions college program;

(iv) is participating in a job corps program, an adult basic education program, or an accredited apprenticeship program; or

(v) is excused from school for a reason determined acceptable by the local educational agency.

(d) The official to whom the information in subsection (8)(a) is provided shall certify in writing to the local educational agency that is providing the information that the information will not be disclosed to any other party except as necessary to recruit and retain students.

~~(8)~~*(9)* As used in this section, "local educational agency" means a public school district or a state-funded school."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2011

CHAPTER NO. 16

[HB 294]

AN ACT ESTABLISHING THE CONFIDENTIALITY OF CERTAIN INFORMATION REGARDING THE TESTING OF LIVESTOCK; PROVIDING EXCEPTIONS TO THE CONFIDENTIALITY OF THE ANIMAL TESTING INFORMATION; AND PROVIDING RULEMAKING AUTHORITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Confidentiality of information collected — exceptions. (1) Except as provided in subsections (2) through (4), all information regarding the testing of any livestock that is owned by or in the possession or custody of a livestock producer, livestock dealer as defined in 81-8-213, or livestock market as defined in 81-8-213 that is collected by the department:

(a) must be held confidential by the department and its employees;

(b) is not a public writing as described in 2-6-101 and is exempt from the public disclosure provisions of Title 2, chapter 6; and

(c) is not subject to discovery or introduction into evidence in any civil action.

(2) For the purposes of this section, "livestock" has the meaning provided in 81-2-702.

(3) The administrator, appointed pursuant to 81-1-301, may disclose information collected by the department from individual livestock producers, livestock dealers, or livestock markets for the purposes of the department's animal health programs whenever in the administrator's judgment the disclosure will assist in the implementation of the animal health programs. The administrator may disclose the information to another governmental entity

pursuant to the conditions described in subsection (4) or if the governmental entity confirms in writing that the entity will maintain the confidentiality of the information.

(4) Animal disease diagnostic tests that identify the owner of the animal tested may not be disclosed unless:

(a) the administrator determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health;

(b) the owner gives written permission to disclose the information;

(c) the information is disclosed in actions or administrative proceedings commenced under the provisions of Title 81, chapter 2, 4, 5, 6, 8, 9, or 30;

(d) disclosure is required by subpoena or court order; or

(e) the information is disclosed to a law enforcement agency in connection with the investigation or prosecution of criminal offenses.

(5) Upon release by the administrator or the board of any information to any other governmental entity or to any person, the administrator shall:

(a) notify the person to whom the information refers or pertains that the release has been made and the name of the governmental entity or person to whom the information was released; and

(b) provide to the person to whom the information refers a copy or summary of the information contained in the release.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 81, chapter 2, part 1, and the provisions of Title 81, chapter 2, part 1, apply to [section 1].

Approved March 16, 2011

CHAPTER NO. 17

[SB 21]

AN ACT AUTHORIZING A DISTRICT COURT TO DISMISS A CIVIL ACTION FOR LACK OF PROSECUTION AFTER A PERIOD OF TIME; AMENDING SECTION 25-9-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Failure to prosecute — dismissal on initiative of court. In a district court action in which it appears on the face of the record that activity by filing of pleadings, order of court, or otherwise has not occurred for a period of 2 years and no stay has been issued or approved by the court, the court or, if the court does not act, the clerk of court shall serve notice of lack of prosecution to each party at the party's last-known address. If a pleading, order, or other activity does not occur within the 60-day period following the service of the notice and if a stay is not issued or approved during the 60-day period, the court shall, on its own motion and without further notice or hearing, dismiss the action without prejudice.

Section 2. Section 25-9-101, MCA, is amended to read:

"25-9-101. Judgment to be on the merits. In every case, judgment must be rendered on the merits, except as provided in *[section 1] and* Rule 41, M.R.Civ.P."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 25, chapter 1, part 1, and the provisions of Title 25, chapter 1, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2011.

Section 5. Applicability. [This act] applies to actions filed in district court on or after [the effective date of this act].

Approved March 16, 2011

CHAPTER NO. 18

[SB 27]

AN ACT ADDING A LICENSED ACUPUNCTURIST TO THE MONTANA STATE BOARD OF MEDICAL EXAMINERS; AMENDING SECTION 2-15-1731, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1731, MCA, is amended to read:

"2-15-1731. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of ~~12~~ *13* members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine, including one member with experience in emergency medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one member who is a licensed nutritionist;

(e) one member who is a licensed physician assistant;

(f) one member who is a licensed acupuncturist;

~~(f)~~*(g)* one member who is a volunteer emergency medical technician, as defined in 50-6-202; and

~~(g)~~*(h)* two members of the general public who are not medical practitioners.

(4) (a) The members having the degree of doctor of medicine may not be from the same county.

(b) The volunteer emergency medical technician must have a demonstrated interest in and knowledge of state and national issues involving emergency medical service.

(c) Each member must be a citizen of the United States.

(d) Each member, except for public members, must have been licensed and must have practiced medicine, *acupuncture,* emergency medical care, or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.

(5) Members shall serve staggered 4-year terms. A term begins on September 1 of each year of appointment. A member may be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved March 16, 2011

CHAPTER NO. 19

[SB 31]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 62ND LEGISLATURE; AMENDING SECTIONS 7-3-4324, 7-6-2541, 10-3-1308, 10-4-311, 10-4-313, 15-30-2339, 15-35-108, 15-36-304, 15-66-102, 15-70-324, 16-2-203, 16-11-119, 17-1-511, 20-7-1201, 20-9-235, 25-9-608, 30-10-103, 30-10-104, 30-13-338, 32-2-406, 32-9-103, 33-2-1323, 35-16-303, 37-15-103, 46-6-412, 50-4-504, 50-15-114, 50-40-104, 50-40-201, 53-6-1001, 61-11-203, 69-3-111, 69-3-2004, 69-5-104, 70-27-111, 72-3-916, 75-1-207, 75-15-103, 75-20-104, 76-2-303, 82-11-111, 85-2-436, 87-2-101, 87-3-236, 87-5-714, AND 90-3-1301, MCA; AMENDING SECTION 8, CHAPTER 330, LAWS OF 2009; AND REPEALING SECTION 5-11-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-4324, MCA, is amended to read:

"7-3-4324. Procedure to enact ordinance or resolution. (1) Each proposed ordinance or resolution ~~shall~~ *must* be introduced in written or printed form and ~~shall~~ *may* not contain more than one subject, which ~~shall~~ *must* be clearly stated in the title~~;~~ *;* ~~but~~ *however,* general appropriation ordinances may contain the various subjects and accounts for which money is to be appropriated. ~~Every~~ *Each* ordinance or resolution passed by the commission ~~shall~~ *must* be signed by the mayor or two members *of the commission* and filed with the clerk within 2 days and ~~by him~~ *must be* recorded *by the clerk*.

(2) The enacting clause of all ordinances passed by the commission ~~shall~~ *must* be "Be it ordained by the commission of the (city or town) of (name of city or town)". The enacting clause of all ordinances submitted by ~~the~~ initiative ~~shall~~ *must* be "Be it ordained by the people of the (city or town) of (name of city or town)".

(3) ~~No~~ *An* ordinance, unless it ~~be~~ *is* declared an emergency, ~~shall~~ *may not* be passed on the day on which it ~~shall have been~~ *is* introduced unless ~~so~~ ordered by an affirmative vote of four-fifths of the members of the commission in cities with five commissioners and two-thirds of the members of the commission in all other cities and towns.

(4) ~~No~~ *An* ordinance or resolution or section ~~thereof shall~~ *of an ordinance or resolution may not* be revised or amended unless the new ordinance or resolution contains the entire ordinance or resolution or section *being* revised or amended.

(5) ~~Every~~ *Each* ordinance or resolution, upon its final passage, ~~shall~~ *must* be recorded in a book kept for that purpose and ~~shall~~ *must* be authenticated by the signature of the presiding officer and the clerk of the commission. At ~~least~~ *a minimum,* the number and title of ~~every~~ *each* ordinance or resolution ~~shall~~ *must* be published at least once within 10 days after its final passage in ~~such~~ *the* manner ~~as is~~ provided *for* in this part."

Section 2. Section 7-6-2541, MCA, is amended to read:

"7-6-2541. County detention center inmate medical costs. The board of county commissioners shall budget and expend funds for inmate medical care, including but not limited to costs of providing direct medical care, medication, medical services, hospitalization, insurance premiums, self-insured coverage, or contracted services for expenses that must be borne by the county for inmates confined in a county detention center as provided for in ~~7-32-2222~~ *7-32-2224*."

Section 3. Section 10-3-1308, MCA, is amended to read:

"10-3-1308. Responsibilities of highway patrol — monitoring of motor carriers — billing. (1) After receiving notification from the disaster and emergency services division that a motor carrier will be transporting high-level radioactive waste or transuranic waste through the state, the highway patrol shall establish a plan for monitoring the shipment.

(2) Monitoring a shipment by motor carrier may include escorting the vehicle through the state, establishing checkpoints, shadowing the vehicle, electronically following the vehicle's movements, or any other method determined by the highway patrol to be effective and safe.

(3) The highway patrol shall coordinate inspection of the motor carrier with the department of transportation's motor carrier services division.

(4) The highway patrol shall determine the cost that it has incurred in monitoring each motor carrier and shall submit a bill for reimbursement to the disaster and emergency services division for payment out of the account established in 10-3-1304(1) ~~according to the priorities established in 10-3-1304(3)~~.

(5) The routing of the transport by motor carrier of high-level radioactive waste and transuranic waste must be determined by the department of transportation and the appropriate regulating federal authority."

Section 4. Section 10-4-311, MCA, is amended to read:

"10-4-311. Distribution of enhanced 9-1-1 account by department. (1) The department shall make quarterly distributions of the entire enhanced 9-1-1 account for costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(a) collection of the fee imposed by 10-4-201(1)(b); and

(b) modification of central office switching and trunking equipment necessary to provide service for an enhanced 9-1-1 system only.

(2) Payments under subsection (1) may be made only after application by the provider to the department for costs described in subsection (1). The department shall review all applications relevant to subsection (1) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid,~~:~~

~~(a) for each fiscal year through the fiscal year ending June 30, 2007:~~

~~(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.~~

~~(ii) the remaining 16% of the balance of the account must be distributed evenly to the counties with 1% or less than 1% of the total population of the state; and~~

~~(b) for fiscal years beginning after June 30, 2007,~~ 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However,

each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(4) An enhanced 9-1-1 jurisdiction whose enhanced 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by an enhanced 9-1-1 jurisdiction with an approved final plan for enhanced 9-1-1 service the proportional amount for each city or county served by the enhanced 9-1-1 jurisdiction. The department shall, upon request, provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(5) If the department determines that an enhanced 9-1-1 jurisdiction is not adhering to an approved plan for enhanced 9-1-1 service or is not using funds in the manner prescribed in 10-4-312, the department may, after giving notice to the jurisdiction and providing an opportunity for a representative of the jurisdiction to comment on the department's determination, suspend payment from the enhanced 9-1-1 account to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds from the enhanced 9-1-1 account until the department determines that the jurisdiction is complying with the approved plan for enhanced 9-1-1 and fund usage limitations."

Section 5. Section 10-4-313, MCA, is amended to read:

"10-4-313. Distribution of wireless enhanced 9-1-1 account by department. (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (1)(a)(i) and (1)(a)(ii) must be adjusted to ensure that a wireless provider does not receive less than the amount allocated to wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless

provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in 10-4-115, the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction ~~in accordance with 10-4-311(3)~~ as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be allocated evenly to the counties with 1% or less than 1% of the total population of the state; and

(iii) prior to distribution, the amounts allocated under subsections (2)(a)(i) and (2)(a)(ii) must be adjusted to ensure that a county does not receive less than the amount allocated to counties with 1% or less of the total population of the state; and

(b) for fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account."

Section 6. Section 15-30-2339, MCA, is amended to read:

"15-30-2339. Residential property tax credit for elderly — filing date. (1) Except as provided in subsection ~~(2)~~ *(3)*, a claim for relief must be submitted at the same time the claimant's individual income tax return is due. For an individual not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) A receipt showing property tax billed or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support a claim.

(3) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists.

(4) In the event that an individual who would have a claim under 15-30-2337 through 15-30-2341 dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

(5) The department or an individual may revise a return and make a claim under 15-30-2337 through 15-30-2341 within 5 years from the last day prescribed for filing a claim for relief."

Section 7. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of [5.8% through September 30, 2013, and beginning October 1, 2013, the amount of] 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $625,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $1.275 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2013—sec. 5, Ch. 459, L. 2009.)

15-35-108. (Effective July 1, 2013) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of {5.8% through September 30, 2013, and beginning October 1, 2013, the amount of} 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2019—secs. 2, 3, Ch. 459, L. 2009.)

15-35-108. (Effective July 1, 2019) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 8. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas — exemption. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production:		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper oil production:		
(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(c) (i) stripper well exemption production	0.5%	14.8%

(ii) stripper well bonus production	6.0%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection ~~(6)(d)~~ *(6)(e)*, then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $38 a barrel. If the price of oil is equal to or greater than $38 a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.

(ii) Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to or greater than $38 a barrel.

(e) For the purposes of subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil and gas natural resource distribution account as determined under subsection (7)(b).

(b) The total of the privilege and license tax and the tax for the oil and gas natural resource distribution account established in 90-6-1001(1) may not exceed 0.3%. The base rate for the tax for oil and gas natural resource distribution account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:

(i) exceeds 0.22%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or

(ii) is less than 0.18%, the rate for the tax to fund the oil and gas natural resource distribution account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.

(c) The board of oil and gas conservation shall give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil and gas natural resource distribution account is effective at the same time that the board of oil and gas conservation rate is effective.

(8) Any interest in production owned by the state or a local government is exempt from taxation under this section."

Section 9. Section 15-66-102, MCA, is amended to read:

"15-66-102. (Temporary) Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee:

(a) in the amount of $48 for each inpatient bed day between January 1, 2009, and December 31, 2009; and

(b) beginning January 1, 2010, in the amount of $50 for each inpatient bed day.

(2) Subject to subsection (3), all proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 17-2-124, be deposited to the credit of the department of public health and human services in a state special revenue account as provided in 53-6-149.

(3) The following amounts must be deposited in the state general fund:

(a) for state fiscal year 2009, proceeds in excess of $16,232,795;

(b) for state fiscal year 2010, proceeds in excess of $18,505,269; and

(c) for state fiscal year 2011, proceeds in excess of $19,818,193. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003—see chapter compiler's comment; sec. 79, Ch. 489, L. 2009. Terminates June 30, 2011—sec. 82, Ch. 489, L. 2009.)

15-66-102. (Effective July 1, 2011, or on occurrence of contingency) Utilization fee for inpatient bed days. (1) Each hospital in the state shall pay to the department a utilization fee:

~~(a) in the amount of $27.70 for each inpatient bed day between January 1, 2006, and June 30, 2007;~~

~~(b) in the amount of $47 for each inpatient bed day between July 1, 2007, and December 31, 2007;~~

~~(c) in the amount of $43 for each inpatient bed day between January 1, 2008, and December 31, 2008;~~

~~(d) in the amount of $48 for each inpatient bed day between January 1, 2009, and December 31, 2009; and~~

~~(e) beginning January 1, 2010,~~ in the amount of $50 for each inpatient bed day.

(2) All proceeds from the collection of utilization fees, including penalties and interest, must, in accordance with the provisions of 17-2-124, be deposited to the credit of the department of public health and human services in a state special revenue account as provided in 53-6-149. (Void on occurrence of contingency—sec. 18, Ch. 390, L. 2003—see chapter compiler's comment.)"

Section 10. Section 15-70-324, MCA, is amended to read:

"15-70-324. Examination of records — enforcement of part. (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and may investigate the character of the disposition that any person makes of special fuel in order to ascertain and determine whether all excise taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and must be, if requested by the department, accompanied by the special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the special fuel has been delivered by the special fuel user into the fuel supply tanks of motor vehicles and consumed in the operation of motor vehicles upon the highways unless the contrary is established by satisfactory evidence.

(4) The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed $500 upon conviction for the first offense, not to exceed $1,000 upon conviction for the second offense, and not to exceed $2,000 for each subsequent conviction. Each refusal is a separate offense.

(5) The department shall, upon request from officials to whom ~~are~~ *is* entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of Canada, forward to the officials any information that it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel user~~, provided~~ *if* the other state or states furnish ~~like~~ *similar* information to this state."

Section 11. Section 16-2-203, MCA, is amended to read:

"16-2-203. ~~Department sales~~ *Sales* to licensees. ~~The department may sell through its stores~~ *Agency liquor stores may sell* to licensees licensed under this code all kinds of liquor and table wine at the posted price ~~thereof in the store~~

~~in which the liquor and table wine are sold~~. All sales ~~shall~~ *must* be ~~upon~~ *made on* a cash basis."

Section 12. Section 16-11-119, MCA, is amended to read:

"16-11-119. (Temporary) Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or $2 million, whichever is greater, in an account in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes. The department of public health and human services may not expend more money from the account than is appropriated by the legislature. Subject to subsection (2) of this section, the department may not transfer funds in the account or expenditure authority related to the account pursuant to 17-7-139, 17-7-301, or 17-8-101.

~~(b) for fiscal years ending June 30, 2010, and June 30, 2011, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana;~~

~~(c)~~*(b)* 2.6% in the long-range building program account provided for in 17-7-205;

~~(d)~~*(c)* 44% in the health and medicaid initiatives account provided for in 53-6-1201; and

~~(e)~~*(d)* the remainder to the state general fund.

(2) If money in the state special revenue account for the operation and maintenance of state veterans' nursing homes exceeds $2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201. (Terminates June 30, 2011—sec. 35(1), Ch. 486, L. 2009.)

16-11-119. (Effective July 1, 2011) Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or $2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

~~(b) for fiscal years ending June 30, 2010, and June 30, 2011, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana;~~

~~(c)~~*(b)* 2.6% in the long-range building program account provided for in 17-7-205;

~~(d)~~*(c)* 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

~~(e)~~*(d)* the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds $2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201."

Section 13. Section 17-1-511, MCA, is amended to read:

"17-1-511. General fund transfer. ~~(1) By November 1, 2008, the department of revenue shall determine the total amount of the tax credit claimed under 15-30-2369 through 15-30-2372 that was taken by physicians practicing in rural areas for tax years 2006 and 2007 and calculate the average of those amounts. The department of revenue shall report the average amount determined under this subsection to the state treasurer.~~

~~(2) (a) For the fiscal year beginning July 1, 2008, the state treasurer shall transfer 25% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501. The transfer under this subsection (2)(a) may not occur until after the amount is reported by the department of revenue under subsection (1).~~

~~(b) For the fiscal year beginning July 1, 2009, the state treasurer shall transfer 50% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.~~

~~(c) For the fiscal year beginning July 1, 2010, the state treasurer shall transfer 75% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.~~

~~(d) For each~~ *Each* fiscal year beginning after June 30, 2011, the state treasurer shall transfer ~~100% of~~ the amount reported under ~~subsection (1)~~ *section 2(1), Chapter 361, Laws of 2007,* from the general fund to the state special revenue account created in 20-26-1501."

Section 14. Section 20-7-1201, MCA, is amended to read:

"20-7-1201. Montana ~~virtual~~ *digital* academy — purposes — governance. (1) There is a Montana ~~virtual~~ *digital* academy at a unit of the Montana university system.

(2) The purposes of the Montana ~~virtual~~ *digital* academy are to:

(a) make distance learning opportunities available to all school-age children through public school districts in the state of Montana;

(b) offer high-quality instructors who are licensed and endorsed in Montana and courses that are in compliance with all relevant education and distance learning rules, standards, and policies; and

(c) emphasize the core subject matters required under the accreditation standards, offer advanced courses for dual credit in collaboration with the Montana university system, and offer enrichment courses.

(3) The Montana ~~virtual~~ *digital* academy must be governed by a board with equal representation from:

(a) the commissioner of higher education or a designee;

(b) the superintendent of public instruction or a designee;

(c) a Montana-licensed and Montana-endorsed classroom teacher appointed by the board of public education;

(d) a Montana-licensed school district administrator appointed by the board of public education;

(e) a trustee of a Montana school district appointed by the board of public education;

(f) the dean of the school of education of the hosting unit of the Montana university system or a designee as a nonvoting member; and

(g) the two officers provided for in subsection (5) as nonvoting members.

(4) The governing board shall elect a presiding officer and vice presiding officer to 2-year terms without limitation on the number of terms.

(5) The governing board shall hire a program director and a curriculum director who shall serve as chief executive officer and vice chief executive officer respectively on the governing board in a nonvoting capacity. The program director shall develop and, upon approval of the governing board, implement policies and guidelines for the Montana ~~virtual~~ *digital* academy pertaining to:

(a) course offerings;

(b) software and hardware selection;

(c) instructor selection;

(d) partnering school agreements;

(e) instructor training and curriculum development;

(f) course evaluation;

(g) grant opportunities; and

(h) other activities that are essential to the success of a statewide distance learning program."

Section 15. Section 20-9-235, MCA, is amended to read:

"20-9-235. Authorization for school district investment account. (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds.

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

(ii) be binding upon the district and the county treasurer for a negotiated period of time;

(iii) be signed by the presiding officer of the board of trustees and the county treasurer; and

(iv) ~~except as provided in subsection (4)(b),~~ coincide with fiscal years beginning on July 1 and ending on June 30.

~~(b) An agreement that establishes a school district investment account for fiscal year 2002 must be entered into no later than October 1, 2001.~~

~~(c)~~*(b)* The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

(5) Except for debt service money that the county treasurer is required by law to collect and report to the districts, all other revenue may be sent directly to a participating district's investment account.

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts."

Section 16. Section 25-9-608, MCA, is amended to read:

"25-9-608. Saving clause. This part does not prevent the recognition of a ~~foreign~~ *foreign-country* judgment in situations not covered by this part."

Section 17. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) *of this section* is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person"~~, for the purpose of parts 1 through 3 of this chapter,~~ means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.

(b) Salesperson does not include an individual who represents:

(i) an issuer in:

(A) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

(D) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", ~~"Public Utility Holding Company Act of 1935"~~ *"Energy Policy Act of 2005"*, "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any*:*

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) commodity investment contract;

(vi) commodity option;

(vii) debenture;

(viii) evidence of indebtedness;

(ix) certificate of interest or participation in any profit-sharing agreement;

(x) collateral-trust certificate;

(xi) preorganization certificate or subscription; transferable shares;

(xii) investment contract;

(xiii) voting-trust certificate;

(xiv) certificate of deposit for a security;

(xv) viatical settlement purchase agreement;

(xvi) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or~~,~~

(xvii) in general~~, any~~*:*

(A) interest or instrument commonly known as a security~~, any~~*;*

(B) put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security~~,~~*;* or

(C) ~~any~~ certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the ~~foregoing~~ *items in this subsection (22)(a)(xvii)*.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 18. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 and 30-10-211 do not apply to any of the following securities:

(1) any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of ~~the foregoing; provided, however~~ *those entities. However*, 30-10-202 through 30-10-207 and 30-10-211 apply to a security issued by any of ~~the foregoing~~ *those entities* that is payable solely from payments to be received in respect ~~of~~ *to* property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise~~,~~ unless the enterprise or any security of which it is the issuer is within any of the exemptions ~~enumerated~~ *listed* in subsections (2) through (15). ~~of this section;~~

(2) any security issued or guaranteed by Canada, a Canadian province, a political subdivision of a province, or an agency or corporate or other instrumentality of one or more of ~~the foregoing~~ *those entities* or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by a bank organized under the laws of the United States or a bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in, or a debt of, or guaranteed by a federal savings and loan association or a building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by a railroad, other common carrier, public utility, or holding company that is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the ~~Public Utility Holding Company Act of 1935~~ *Energy Policy Act of 2005* or a subsidiary of a registered holding company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province~~;~~. ~~also~~ *A security referred to under this subsection (6)(d) includes* equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by the railroad or public utility would be exempt under this subsection~~;~~ *(6)(d)*.

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed an authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been registered for the 3 years immediately preceding the offering date;

(c) the issuer or a significant subsidiary has not had a material default during the last 7 years, or during the issuer's existence if that period is less than 7 years, in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year~~;~~, and if the offering is of interest-bearing securities, has had for its last fiscal year ~~such~~ *consolidated* net income, ~~but~~ before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year", as used in this subsection (7)(d), means the most recent year for which audited financial statements are available~~,~~ provided that the statements cover a fiscal period *that* ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, the securities have voting rights and rights including the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares~~,~~ except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on that date there are at least 750,000 of the shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by ~~any~~ *a* person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within the 20-day period;

(9) any commercial paper that arises out of a current transaction or the proceeds of which have been or are to be used for the current transaction and that evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of the paper that is likewise limited or any guarantee of the paper or of any renewal~~,~~ when the commercial paper is sold to banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner~~;~~*,* any other security of the same issuer that is of senior or substantially equal rank~~;~~*,* any security called for by subscription rights or warrants ~~so~~ listed or approved~~;~~ *for listing as provided in this subsection,* or any warrant or right to purchase or subscribe to any of the ~~foregoing~~ *securities listed in this subsection*. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner~~;~~*,* any other security of the same issuer that is of senior or substantially equal rank~~;~~*,* any security called for by subscription rights or warrants ~~so~~ listed or approved~~;~~ *for listing as provided in this subsection,* or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(14) any security issued by and representing an interest in, or a debt of, or any security guaranteed by any insurer organized and authorized to transact business under the laws of any state;

(15) any security for which an offer or sale is not directed to or received by a person in this state~~, and~~ *when* the issuer does not maintain a place of business in the state."

Section 19. Section 30-13-338, MCA, is amended to read:

"30-13-338. Trademark counterfeiting — presumption — penalties — restitution — forfeiture. (1) (a) A person commits the offense of trademark counterfeiting if the person knowingly manufactures, distributes, transports, offers for sale, sells, or possesses with intent to sell or distribute any goods, services, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services bearing a counterfeit mark.

(b) A person having possession, custody, or control of more than 25 ~~[items of]~~ *items of* goods, labels, patches, fabric, stickers, wrappers, badges, emblems,

medallions, charms, boxes, containers, cans, cases, hangtags, documentation, packaging, or any other components of any type or nature bearing a counterfeit mark must be presumed to possess the items with intent to offer for sale, sell, or distribute the items.

(2) (a) A person convicted of the offense of trademark counterfeiting shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offense involves less than 100 items bearing one or more counterfeit marks or the total retail value is less than $1,000. A person convicted of a second offense shall be fined $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) If the offense involves 100 items or more bearing one or more counterfeit marks and the retail value is $1,000 or more, the person shall be fined an amount not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) When imposing sentence on a person convicted of a violation of this section, the court may order restitution as provided in 30-13-335 to any person harmed by the trademark counterfeiting.

(4) (a) Any items bearing a counterfeit mark and all personal property employed or used in connection with counterfeiting, including but not limited to any items, objects, tools, machines, equipment, instruments, or vehicles of any kind, must be seized by law enforcement officials who have the opportunity to take possession of the items or personal property.

(b) All seized items and personal property referenced in this subsection (4) must be forfeited and may, upon request of the registrant, be released to the registrant for destruction or destroyed by an officer of the court as provided in 30-13-335 unless the registrant agrees to another disposition of the seized items or personal property."

Section 20. Section 32-2-406, MCA, is amended to read:

"32-2-406. Investments. (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal deposit insurance corporation lawfully issued pursuant to ~~Title IV of the National Housing Act~~ *12 U.S.C. 1824*;

(d) improved real estate that has been sold under contract, including suburban homes or farm lands but not including mining property. However, the total amount remaining invested in real estate, excluding real estate otherwise acquired, may not exceed 15% of its assets. The amount invested in real estate may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property purchased, whichever is the lesser.

(e) other bonds, securities, and investments, not to exceed 10% of the association assets.

(2) Not ~~over~~ *more than* 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of ~~the~~ law, it is lawful for a building and loan association or other financial institution operating under the laws of this state to invest the funds or money *eligible for investment that is* in its custody or possession~~, eligible for investment,~~ in debentures issued by the federal housing administrator and in obligations of national mortgage associations."

Section 21. Section 32-9-103, MCA, is amended to read:

"32-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.

(3) "Approved test provider" means any test provider approved by the nationwide mortgage licensing system and registry.

(4) "Bona fide third party" means a person that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(5) "Borrower" means a person seeking a residential mortgage loan.

(6) "Branch office" means a location other than a licensee's principal place of business.

(7) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

(8) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

(10) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

(11) "Entity" means a business organization, including a sole proprietorship.

(12) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender and is maintained solely for the holding and payment of escrow funds.

(13) "Escrow funds" means funds entrusted to a mortgage lender by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

(14) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

(15) "Immediate family member" means a spouse, child, sibling, *parent,* grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

(18) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

(19) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(20) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(21) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection (21), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

(22) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

(23) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

(i) engaged solely as a loan processor or underwriter, except as provided in 32-9-129; or

(ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

(24) "Mortgage servicer loss mitigation specialist" means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower's obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.

(25) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of state-licensed mortgage brokers, state-licensed mortgage lenders, state-licensed mortgage loan originators, and registered mortgage loan originators.

(26) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

(27) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

(28) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections (28)(a) through (28)(d).

(29) "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

(30) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v), or on residential real estate located in Montana.

(31) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

(32) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees.

(33) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

(34) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 22. Section 33-2-1323, MCA, is amended to read:

"33-2-1323. Confidentiality of proceedings. In all proceedings and judicial reviews under 33-2-1321 and 33-2-1322, all records of the insurer, *all* other documents, and all files and court records and papers of the commissioner, ~~so~~ *as* far as they pertain to or are a part of the record of the proceedings, remain confidential except as necessary to obtain compliance with the ~~records, documents, files, or papers,~~ *proceedings* unless the district court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until the court order, all papers filed with the clerk of the district court must be held in a confidential file."

Section 23. Section 35-16-303, MCA, is amended to read:

"35-16-303. Withdrawal of membership land — procedure. *(1)* ~~Any~~ *A* person ~~holding~~ *who holds* title or evidence of title to membership land included in a corporation or district organized under the provisions of this chapter ~~desiring~~ *and who desires* to withdraw the person's land from the corporation or district may do so upon*:*

(a) presenting to the board of directors a verified petition stating that the person is the holder of title or evidence of title to membership land included in the corporation or district, particularly describing the land with a map or plat, that the person wishes to withdraw from the corporation or district~~,~~*;* and

(b) tendering to the board the pro rata amount of liability of the person's land for all of the corporation's lawfully created and existing lien liabilities together with the person's pro rata amount of interest due and to become due upon any liabilities *up* to the maturity of the liabilities.

(2) If the matters and things set forth in the petition are true and the petitioner deposits with the board the petitioner's pro rata amount of the liabilities or furnishes a receipt for the amount from the mortgage *holders* or lienholders holding liens against the ~~lands~~ *land*, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of the ~~lands~~ *land* from the corporation or district and its liabilities.

(3) Upon presentation of the release to the mortgage holder or lienholder claiming a right against the membership ~~lands~~ *land*, ~~they~~ *the mortgage holder or lienholder* shall furnish ~~their~~ *a* release, which may be filed and recorded in any county or counties in which the land is located.

(4) The board of directors and corporate assets of the corporation must be responsible to any mortgage *holder* or lienholder and *to* the ~~withdrawee~~ *person withdrawing the land* for the ~~payments~~ *payment* of funds on ~~their~~ *the* debt or liability."

Section 24. Section 37-15-103, MCA, is amended to read:

"37-15-103. Exemptions. (1) This chapter does not prevent a person licensed in this state under any other law from engaging in the profession or business for which that person is licensed.

(2) This chapter does not restrict or prevent activities of a speech-language pathology or audiology nature or the use of the official title of the position for which the activities were performed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) who are not licensed under this chapter may perform those activities only within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) This chapter does not restrict the activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of a supervised course of study, and a fee may not accrue directly or indirectly to the student. These students must be designated by the title "speech-language pathology or audiology intern", "speech-language pathology or audiology trainee", or a title clearly indicating the training status appropriate to the level of training.

(5) This chapter does not restrict a person from another state from offering speech-language pathology or audiology services in this state if the services are performed for not more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations that the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter may offer speech-language pathology or audiology services in this state for not more than 30 days in any

calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) This chapter does not restrict a person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which the person qualifies.

(7) This chapter does not restrict a person who ~~holds a certificate of registration~~ *is licensed* in this state as a hearing aid ~~dealer~~ *dispenser* from performing the functions for which the person qualifies and that are described in Title 37, chapter 16.

(8) This chapter does not exempt an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16."

Section 25. Section 46-6-412, MCA, is amended to read:

"46-6-412. Arrest by ~~officer of~~ United States customs ~~service~~ *and border protection officer* or immigration and ~~naturalization service~~ *customs enforcement officer*. ~~An officer of the~~ *A* United States customs ~~service~~ *and border protection officer* or immigration and ~~naturalization service~~ *customs enforcement officer* may make an arrest without a warrant if the officer is on duty and one or more of the following situations exist:

(1) A person commits or attempts to commit an offense in the officer's presence.

(2) The officer believes on reasonable grounds that the person is committing an offense or that the person committed an offense and the circumstances require the person's immediate arrest.

(3) The officer believes on reasonable grounds that a warrant for the person's arrest has been issued in this state.

(4) The officer believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction."

Section 26. Section 50-4-504, MCA, is amended to read:

"50-4-504. Definitions. As used in this part, the following definitions apply:

~~(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.~~

~~(2)~~*(1)* "Health care" includes both physical health care and mental health care.

~~(3) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.~~

~~(4)~~*(2)* "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

~~(5)~~*(3)* "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and~~,~~ to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."

Section 27. Section 50-15-114, MCA, is amended to read:

"50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law.

(2) A person shall be fined not more than $1,000 or be imprisoned for not more than 1 year, or both, if:

(a) the person willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment of a report, record, or certificate or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, the person makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) the person willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, the person willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that the certificate or certified copy was issued upon a record that is false in whole or in part or that relates to the birth of another person;

(e) the person willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than $25 or more than $500, imprisoned for not more than 30 days, or both, if the person:

(a) knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) refuses to provide information required by law;

(c) willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon ~~him~~ *the person* by law."

Section 28. Section 50-40-104, MCA, is amended to read:

"50-40-104. Smoking in enclosed public places prohibited — notice to public — places where prohibition inapplicable. (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, that smoking in the enclosed public place is prohibited.

(3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

~~(4) The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted.~~

~~(5)~~*(4)* The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

~~(a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;~~

~~(b)~~*(a)* a private residence~~,~~ unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

(ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or

(iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

~~(c)~~*(b)* a private motor vehicle;

~~(d)~~*(c)* school property in which smoking is allowed pursuant to the exception in 20-1-220;

~~(e)~~*(d)* a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and

~~(f)~~*(e)* a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a."

Section 29. Section 50-40-201, MCA, is amended to read:

"50-40-201. Local government buildings — smoking prohibited. (1) In all parts of buildings maintained by a political subdivision, smoking is prohibited as provided in this section.

(2) Buildings owned and occupied by a political subdivision only ~~must be smoke-free on January 1, 2006. Buildings~~ *and buildings* leased and occupied by a political subdivision only must be smoke-free ~~as soon as practicable on or after January 1, 2006, but no later than July 1, 2006~~. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free ~~as soon as practicable after January 1, 2006, but no later than July 1, 2006,~~ and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public."

Section 30. Section 53-6-1001, MCA, is amended to read:

"53-6-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Average wholesale price" means the wholesale price charged on a specific drug that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.~~

~~(2)~~*(1)* "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

~~(3)~~*(2)* "Discounted price" means a price set by the department by rule pursuant to 53-6-1002.

~~(4) "Gross household income" has the meaning provided in 15-30-2337.~~

~~(5)~~*(3)* "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

~~(6)~~*(4)* "Participating retail pharmacy" means a retail pharmacy located in this state or another business licensed to dispense prescription drugs in this state that is medicaid-approved.

~~(7)~~*(5)* "Program" means the prescription drug plus discount program provided for in 53-6-1002.

~~(8)~~*(6)* "Secondary discounted price" means the discounted price less any further discounts funded by manufacturer rebates for medication purchased by participants in the program."

Section 31. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions — *habitual traffic offenders — point schedule.* *(1)* As used in this part, the following definitions apply:

~~(1)~~*(a)* "Conviction" has the meaning provided in 61-5-213.

~~(2)~~*(b)* "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in ~~this subsection:~~ *subsection (2).*

~~(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;~~

~~(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;~~

~~(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;~~

~~(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;~~

~~(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;~~

~~(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as described in 61-7-105, 8 points;~~

~~(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;~~

~~(h) reckless driving, 5 points;~~

~~(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;~~

~~(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;~~

~~(k) operating a motor vehicle without a license to do so, 2 points. However, this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired.~~

~~(l) speeding, except as provided in 61-8-725(2), 3 points;~~

~~(m) all other moving violations, 2 points.~~

~~(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.~~

~~(4)~~*(c)* "License" means any type of license or permit to operate a motor vehicle.

~~(5)~~*(d)* "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway.

~~(6)~~*(e)* ~~A traffic regulation~~ *"Traffic regulation"* includes any provision governing motor vehicle operation, equipment, safety, or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking.

(2) Subject to subsection (3), the point schedule used to determine whether an individual is a habitual traffic offender is as follows:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as described in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points. However, this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired.

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant."

Section 32. Section 69-3-111, MCA, is amended to read:

"69-3-111. Persons with interest in property leased or to be sold to public utility — exemption. (1) Upon application, the commission *may*, by order, ~~may~~ determine that any person not otherwise a public utility is not a public utility subject to the jurisdiction, control, or regulation of the commission under this title~~,~~ solely because ~~such~~ *the* person owns or controls any plant or equipment, any part of or undivided interest in a plant or equipment, or any water right described in 69-3-101:

(a) ~~which~~ *that* is leased or sold or held for lease or sale to any public utility or other lessee; ~~or~~

(b) the operation and use of which is vested by lease or other contract in a public utility or other lessee; or

(c) for a period of not more than 90 days after termination of any lease or contract described in subsection (1)(a) or (1)(b) or after ~~such~~ *the* person gains possession of ~~such~~ *the* property following a breach of ~~such~~ *a* lease or contract.

(2) ~~Any~~ *An* order ~~once issued~~ may not be revoked or modified by the commission unless there is a material change in the lease or contract terms forming the basis of ~~such~~ *the* order.

(3) The commission may, upon application by a public utility, issue its order approving the terms of any lease or contract described in subsection (1)(a) or (1)(b) for the purpose of qualifying any party ~~thereto~~ *to the lease or contract* for an exemption by the United States securities and exchange commission, or its successor, from the federal ~~Public Utility Holding Company Act of 1935~~ *Energy Policy Act of 2005*.

(4) A public utility, as lessee of any plant or equipment, any part of~~,~~ or undivided interest in~~,~~ a plant or equipment, or any water right described in 69-3-101, ~~which~~ *that* is subject to any lease or contract described in this section~~,~~ shall comply with this title~~,~~ regarding ~~such~~ *the* plant, equipment, or water right.

(5) Nothing in this section may be construed to alter or modify the authority of the commission to regulate the rates and services of a public utility that is subject to the provisions of this title."

Section 33. Section 69-3-2004, MCA, is amended to read:

"69-3-2004. Renewable resource standard — administrative penalty — waiver. (1) Except as provided in 69-3-2007 and subsections (11) and (12) of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2011.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility and competitive electricity supplier shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail customers in Montana.

(b) The ~~standard~~ *standards* in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility or competitive electricity supplier has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the ~~standard~~ *standards* established in subsections (2) through (4), a public utility or competitive electricity supplier may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) through (4).

(9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of $10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in ~~69-8-412(1)(a)~~ *69-8-412(1)(b)*.

(11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver from full compliance with the standards in

subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or competitive electricity supplier; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract."

Section 34. Section 69-5-104, MCA, is amended to read:

"69-5-104. Continuation of electric service facilities to existing consumers. Each electric ~~service~~ facilities provider has the right to provide electric service facilities to all premises being served by it or to which any of its facilities are attached on May 2, 1997."

Section 35. Section 70-27-111, MCA, is amended to read:

"70-27-111. Parties defendant. (1) A person, other than the tenant of the premises and *a* subtenant, if there is one, ~~in the actual occupation of~~ *occupying* the premises when the complaint is filed need *not* be made ~~parties~~ *a party* defendant in the proceeding, ~~nor shall any~~ *and a* proceeding *may not* abate or the plaintiff be nonsuited for the nonjoinder of any person who might have been made a party defendant. However, when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against that party.

(2) If a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by 70-27-108(2) upon the tenant of the premises, the fact that the notice was not served on each subtenant does not constitute a defense to the action.

(3) If a married person is a tenant or subtenant, failure to join the person's spouse does not constitute a defense. However, if the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant may be enforced only against property on the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by the tenant's or subtenant's spouse.

(4) All persons who enter the premises ~~under the tenant~~ after the commencement of the action are bound by the judgment *in* the same *manner* as if they had been made party to the action."

Section 36. Section 72-3-916, MCA, is amended to read:

"72-3-916. Distribution to trustee — registration — bond. (1) Before ~~distributing~~ *making a distribution* to a trustee, the personal representative may require that the trust be registered~~,~~ if the state in which it is to be administered provides for registration~~,~~ and *may require* that the trustee inform in writing the current beneficiaries and, if possible, one or more persons who under 72-1-303 may represent beneficiaries with future interests of the trustee's name and

address and provide each with a copy of the terms of the trust that describe or affect the interest of the beneficiaries and with relevant information about the assets of the trust and the particulars relating to the administration.

(2) If the trust instrument does not excuse the trustee from ~~giving~~ *posting* bond, the personal representative may petition the appropriate court to require that the trustee post bond if the ~~trustee~~ *personal representative* believes that distribution might jeopardize the interests of persons who are not able to protect themselves~~,~~ and the ~~trustee~~ *personal representative* may withhold distribution until the court has acted.

(3) An inference of negligence on the part of the personal representative may not be drawn from the personal representative's failure to exercise the authority conferred by subsections (1) and (2)."

Section 37. Section 75-1-207, MCA, is amended to read:

"75-1-207. Major facility siting applications excepted. (1) Except as provided in subsection (2), a fee as prescribed by this part may not be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(2) The department *of environmental quality* may require payment of costs under 75-1-205(1)(a) by a person who files a petition under 75-20-201(5)."

Section 38. Section 75-15-103, MCA, is amended to read:

"75-15-103. Definitions. As used in this part, the following definitions apply:

(1) "Commercial or industrial activities" means ~~for purposes of subsection (14)~~ those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities are considered commercial or industrial:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence;

(e) railroad tracks and minor sidings;

(f) activities more than 660 feet from the nearest edge of the right-of-way.

(2) "Commercial or industrial zone" means an area that is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances, regulations, or enabling state legislation, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim *zoning district or interim* regulation ~~or map~~ adopted as an emergency measure pursuant to 76-2-206 are not covered by this definition.

(3) "Commission" means the transportation commission of Montana.

(4) "Department" means the department of transportation.

(5) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing other information that the commission may consider desirable.

(6) "Interchange" or "intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, including the deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(7) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(8) "Maintain" means to allow to exist, subject to the provisions of this part.

(9) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use.

(10) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure that is designed, intended, or used to advertise or inform and that is visible from any place on the main-traveled way of the interstate or primary systems.

(11) "Primary system" means that portion of connected main highways as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(12) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way, by or under public supervision or control, for the convenience of the traveling public.

(13) "Secretary" means the secretary of the United States department of transportation.

(14) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance that is occupied by one or more commercial or industrial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities.

(15) "Urban area" means an urbanized area or place, as designated by the United States bureau of the census, that has a population of 5,000 or more and that is within boundaries fixed by the department. The boundaries must at a minimum encompass the entire urban place designated by the bureau of the census.

(16) "Visible" means capable of being seen and legible without visual aid by a person of normal visual acuity."

Section 39. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means*, subject to 75-20-1202*:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field

standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(12) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; or

(d) changing structure spacing, design, or guying.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 40. Section 76-2-303, MCA, is amended to read:

"76-2-303. Procedure to administer certain annexations and zoning laws — hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation~~, provided that~~ *if* the proposed municipal zoning regulations for the annexed property:

(i) authorize land uses comparable to the land uses authorized by county zoning;

(ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to *Title 76, chapter 2,* part 1 or 2 ~~of this chapter~~; or

(iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to *Title 76,* chapter 1*,* ~~of this title or in a master plan, as provided for in 76-2-304(3),~~ for the annexed property.

(b) A joint hearing authorized under this subsection *(3)* fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation."

Section 41. Section 82-11-111, MCA, is amended to read:

"82-11-111. (Temporary) Powers and duties of board. (1) The board shall make investigations that it considers proper to determine whether waste exists or is imminent or whether other facts exist that justify any action by the board under the authority granted by this chapter.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water and disposal of oil field wastes;

(b) classify wells as oil or gas wells or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to implement this chapter.

(3) The board shall determine and prescribe which producing wells are defined as "stripper wells" and which wells are defined as "wildcat wells" and make orders that in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if that is considered necessary in the interest of conservation.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, daily or otherwise, of production of gas from that pool by any existing well or a well drilled after that date and producing from that pool to less

than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate class II injection wells~~,~~ consistent with rules made by it;

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids that the operator is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located~~,~~ or*,* if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and no responsible party can be identified or located or, if a responsible party can be identified and located, *when* the person does not have sufficient financial resources to correct the problems.

(7) The board may take measures to demonstrate to the general public the importance of the state's oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry. The board may:

(a) make grants or loans and provide other forms of financial assistance as necessary or appropriate from available funds to qualified persons for research, development, marketing, educational projects, and processes or activities directly related to the state's oil and gas exploration and production industry;

(b) enter into contracts or agreements to carry out the purposes of this subsection (7), including the authority to contract for the administration of an oil and gas research, development, marketing, and educational program;

(c) cooperate with any private, local, state, or national commission, organization, agent, or group and enter into contracts and agreements for programs benefiting the oil and gas exploration and production industry;

(d) coordinate with the Montana university system, including Montana tech of the university of Montana or any of its affiliated research programs;

(e) accept donations, grants, contributions, and gifts from any public or private source for deposit in the oil and gas education and research account established in 82-11-110;

(f) distribute funds from the oil and gas education and research account to carry out the provisions of this subsection (7); and

(g) make orders and rules to implement the provisions of this subsection (7).

82-11-111. (Effective on occurrence of contingency) Powers and duties of board. (1) The board shall investigate matters it considers proper to determine whether waste exists or is imminent or whether other facts exist that justify any action by the board under the authority granted by this chapter.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water or carbon dioxide and disposal of oil field wastes;

(b) classify wells as oil or gas wells, carbon dioxide injection wells, or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to implement this chapter.

(3) The board shall determine and prescribe which producing wells are defined as "stripper wells" and which wells are defined as "wildcat wells" and make orders that in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if that is considered necessary in the interest of conservation.

(4) With respect to any pool with gas being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate, daily or otherwise, of production of gas from that pool by any existing well or a well drilled after that date and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) Subject to subsection (8), the board has exclusive jurisdiction over carbon dioxide injection wells, geologic storage reservoirs, all class II injection wells, and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate carbon dioxide injection wells and class II injection wells, consistent with rules made by it and pursuant to 82-11-123. If a permit for a carbon dioxide injection well is revoked, an operator may not seek a refund of application or permitting fees or fees paid pursuant to 82-11-181 or 82-11-184(2)(b).

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids that the operator or geologic storage operator is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of carbon dioxide injection wells and class II injection wells.

(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in 82-11-161 or the geologic storage reservoir program account established in ~~85-11-181~~ *82-11-181*:

(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located~~,~~ or*,* if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or

(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and a responsible party cannot be identified or located or, if a responsible party can be identified and located, *when* the person does not have sufficient financial resources to correct the problems.

(7) The board may take measures to demonstrate to the general public the importance of the state's oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry. The board may:

(a) make grants or loans and provide other forms of financial assistance as necessary or appropriate from available funds to qualified persons for research, development, marketing, educational projects, and processes or activities directly related to the state's oil and gas exploration and production industry;

(b) enter into contracts or agreements to carry out the purposes of this subsection (7), including the authority to contract for the administration of an oil and gas research, development, marketing, and educational program;

(c) cooperate with any private, local, state, or national commission, organization, agent, or group and enter into contracts and agreements for programs benefiting the oil and gas exploration and production industry;

(d) coordinate with the Montana university system, including Montana tech of the university of Montana or any of its affiliated research programs;

(e) accept donations, grants, contributions, and gifts from any public or private source for deposit in the oil and gas education and research account established in 82-11-110;

(f) distribute funds from the oil and gas education and research account to carry out the provisions of this subsection (7); and

(g) make orders and rules to implement the provisions of this subsection (7).

(8) (a) Before holding a hearing on a proposed permit for a carbon dioxide injection well, the board shall solicit, document, consider, and address comments from the department of environmental quality on the proposal.

(b) Notwithstanding *the provisions of* subsection (8)(a), the board makes the final decision on issuance of a permit.

(9) Solely for the purposes of administering carbon dioxide injection wells under this part, carbon dioxide within a geologic storage reservoir is not a pollutant, a nuisance, or a hazardous or deleterious substance."

Section 42. Section 85-2-436, MCA, is amended to read:

"85-2-436. Instream flow to protect, maintain, or enhance streamflows to benefit fishery resource — change in appropriation rights by department of fish, wildlife, and parks until June 30, 2019. (1) The department of fish, wildlife, and parks may change an appropriation right, which it either holds in fee simple or leases, to an instream flow purpose of use and a defined place of use to protect, maintain, or enhance streamflows to benefit the fishery resource.

(2) The change in purpose of use or place of use must meet all the criteria and process of 85-2-307 through 85-2-309, 85-2-401, and 85-2-402 and the additional criteria and process in subsection (3) of this section to protect the rights of other appropriators from adverse impacts.

(3) (a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource.

(b) Upon receipt of a correct and complete application for a change in purpose of use or place of use from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed change in appropriation right may file an objection as provided in 85-2-308. A change in appropriation right may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a change of an existing appropriation right for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a change in appropriation right authorization must include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be changed to instream flow is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the change in appropriation right authorization, may be used to protect, maintain, or enhance streamflows below the point of diversion that existed prior to the change in appropriation right.

(e) A lease for instream flow purposes may be entered for a term of up to 10 years, except that a lease of water made available from the development of a water conservation or storage project may be for a term equal to the expected life of the project but not more than 30 years. All leases may be renewed an indefinite number of times but not for more than 10 years for each term. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A change in appropriation right authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (3)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a change in appropriation right authorization must be obtained according to the requirements of 85-2-402.

(f) The department may modify or revoke the change in appropriation right authorization up to 10 years after it is approved if an appropriator other than an appropriator described in subsection (3)(i) submits new evidence not available

at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease or change in appropriation right under this section is the same as the priority of appropriation of the right that is changed to an instream flow purpose.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of a leased appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a change in appropriation right authorization under this section may not object to the exercise of the changed water right according to its terms or the reversion of a leased appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan required under this section.

(4) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and environmental quality council a biennial progress report by December 1 of odd-numbered years. This report must include a summary of all appropriation rights changed to an instream flow purpose in the last 2 years.

(b) For each change in appropriation right to an instream flow purpose, the report must include a copy of the change authorization issued by the department and must address:

(i) the length of the stream reach and how it is determined;

(ii) critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource;

(iii) the amount of water available for instream flow as a result of the change in appropriation right;

(iv) contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods used to monitor use of water under each change in appropriation right.

(5) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired.

(6) (a) From May 8, 2007, through June 30, 2019, the department of fish, wildlife, and parks may change, pursuant to this section, the appropriation rights that it holds in fee simple to instream flow purposes on no more than 12 stream reaches.

(b) After June 30, 2019, the department *of fish, wildlife, and parks* may not change the appropriation rights that it holds in fee simple to instream flow purposes on any stream reaches.

(7) After June 30, 2019, the department *of fish, wildlife, and parks* may not enter into any new lease agreements pursuant to this section or renew any leases that expire after that date."

Section 43. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in 87-1-102, *Title 87,* chapter 3, and this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) "Closed season" means the time during which game birds, *game* fish, ~~and~~ game *animals,* and fur-bearing animals may not be lawfully taken.

(4) "Commission" means the state fish, wildlife, and parks commission.

(5) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(6) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(7) "Game fish" means all species of the family ~~salmonidae~~ *Salmonidae* (chars, trout, salmon, grayling, and whitefish); all species of the genus ~~stizostedion~~ *Sander* (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus ~~esox~~ *Esox* (northern pike, pickerel, and muskellunge); all species of the genus ~~micropterus~~ *Micropterus* (bass); all species of the genus ~~polyodon~~ *Polyodon* (paddlefish); all species of the family ~~acipenseridae~~ *Acipenseridae* (sturgeon); all species of the genus ~~lota~~ *Lota* (burbot or ling); the species ~~perca~~ *Perca* flavescens (yellow perch); all species of the genus ~~pomoxis~~ *Pomoxis* (crappie); and the species ~~ictalurus~~ *Ictalurus* punctatus (channel catfish).

(8) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(9) "Migratory game birds" means*:*

(a) waterfowl, including wild ducks, wild geese, brant, and swans;

(b) cranes, including little brown and sandhill;

(c) rails, including coots;

(d) ~~wilson's~~ *Wilson's* snipes or jacksnipes; and

(e) mourning doves.

(10) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(11) "Open season" means the time during which game birds, *game* fish, ~~and~~ game *animals,* and fur-bearing animals may be lawfully taken.

(12) "Person" means ~~individuals, associations, partnerships, and corporations~~ *an individual, association, partnership, or corporation*.

(13) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(14) "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(15) "Upland game birds" means ~~sharptailed~~ *sharp-tailed* grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(16) "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

Section 44. Section 87-3-236, MCA, is amended to read:

"87-3-236. (Temporary) Warm water game fish surcharge and stamp — warm water game fish defined — accounts established — dedication of revenue to Fort Peck multispecies fish hatchery. (1) A person who is required to be licensed in order to fish in Montana and who desires to fish in waters listed pursuant to subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, Class B-5, or Class A-8 fishing license, pay a warm water game fish surcharge of $5. The surcharge is in addition to the license fee established for each class of license and entitles the holder to fish in the waters listed pursuant to subsection (9) as authorized by the department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the fishing license.

(2) A warm water game fish stamp is valid for the license year in which it is purchased.

(3) Revenue from the warm water game fish surcharge must be placed in the account created in subsection (5) and may be used only for the purposes set out in subsection (7).

(4) As used in this section, "warm water game fish" includes but is not limited to all species of the genera ~~Stizostedion~~ *Sander*, Esox, Micropterus, and Lota and includes largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), walleye ~~(Stizostedion vitreum)~~ *(Sander vitreus)*, sauger ~~(Stizostedion canadense)~~ *(Sander canadensis)*, black crappie (Pomoxis nigromaculatus), white crappie (Pomoxis annularis), channel catfish (Ictalurus punctatus), yellow perch (Perca flavescens), northern pike (Esox lucius), pallid sturgeon (Scaphirhynchus albus), paddlefish (Polyodon spathula), ~~other warm water species classified as species of special concern, threatened, or endangered,~~ chinook salmon (Oncorhynchus tshawytscha), ~~and~~ tiger muskellunge*, and other warm water species classified as species of special concern, threatened, or endangered*.

(5) There is an account into which must be deposited:

(a) all proceeds from the warm water game fish surcharge established in subsection (1); and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the Fort Peck multispecies fish hatchery.

(6) The department shall administer the account within the state special revenue fund established in 17-2-102.

(7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by the department for the operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery established in 87-3-235, which may include the costs incurred in eradicating illegally introduced warm water species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

(8) The department may not use any nonfederal funds for the hatchery authorized in 87-3-235 other than those in the account provided for in subsection (5). There is an account in the federal special revenue fund into which must be deposited all federal money received for purposes of the Fort Peck multispecies fish hatchery and from which the department may use funds for the hatchery authorized in 87-3-235.

(9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish hatchery will be planted. All waters listed in the Montana fishing regulations that require a warm water stamp and waters planted or waters that will be planted with fish from the Fort Peck multispecies fish hatchery must be permanently included on the list. The waters designated in the list are the only waters for which a warm water game fish stamp is required. (Repealed effective March 1, 2012—secs. 3, 4(2), Ch. 431, L. 2009.)"

Section 45. Section 87-5-714, MCA, is amended to read:

"87-5-714. Wildlife species authorized for introduction or transplantation. (1) The following wildlife species may be introduced or transplanted by the department based upon scientific investigation and upon approval of the commission:

(a) gray (Hungarian) partridge (Perdix perdix);

(b) chukar partridge (Alectoris chukar);

(c) ring-necked pheasant (Phasianus colchicus);

(d) turkey (Meleagris gallopavo);

(e) rainbow trout (Salmo gairdneri);

(f) golden trout (Salmo aquabonita);

(g) brown trout (Salmo trutta);

(h) brook trout (Salvelinus fontinalis);

(i) lake trout (Salvelinus namaycush);

(j) northern pike (Esox lucius);

(k) black bullhead (Ictalurus melas);

(l) yellow bullhead (Ictalurus natalis);

(m) largemouth bass (Micropterus salmoides);

(n) smallmouth bass (Micropterus dolomieui);

(o) pumpkinseed sunfish (Lepomis gibbosus);

(p) bluegill (Lepomis macrochirus);

(q) green sunfish (Lepomis cyanellus);

(r) rock bass (Ambloplites rupestris);

(s) black crappie (Pomoxis nigromaculatus);

(t) white crappie (Pomoxis annularis);

(u) yellow perch (Perca flavescens);

(v) walleye ~~(Stizostedion vitreum)~~ *(Sander vitreus)*;

(w) cisco (tulibee) (Coregonus artedii);

(x) spottail shiner (Notropis hudsonius);

(y) kokanee salmon (Oncorhynchus nerka);

(z) chinook salmon (Oncorhynchus tshawytscha);

(aa) lake whitefish (Coregonus clupeaformis);

(bb) golden shiner (Notemigonus crysoleucas).

(2) The commission may by rule and subject to the provisions of 87-5-711 authorize the department to transplant or introduce species of wildlife not listed in subsection (1)."

Section 46. Section 90-3-1301, MCA, is amended to read:

"90-3-1301. Geothermal research. (1) Subject to subsection (2), the Montana bureau of mines and geology may conduct geothermal research that:

(a) characterizes the geothermal resource base in Montana;

(b) tests high-temperature and high-pressure drilling technologies benefiting geothermal well construction; and

(c) determines reservoir characterization, monitoring, and modeling necessary for commercial application in Montana.

(2) If the research is conducted on private property, the bureau must have written agreements with:

(a) the surface property owner and any owners of the geothermal resource for access and use of the site for research purposes; and

(b) subject to subsections (3) and (4), the utility, as defined in 69-5-102, with a service area nearest the research site if the utility intends to commercially develop the site.

(3) If the utility with a service area nearest the research site intends to develop the site for future commercial use, the utility shall:

(a) contribute, at a minimum, 25% of the research costs as determined by the bureau for research at the site; and

(b) have an agreement in place with the surface property owner and any owners of the geothermal resource where the research site is located for future development of the geothermal resource.

(4) If the utility with a service area nearest the research site does not intend to develop the site for commercial use, the utility with a service area next nearest the site may enter into a written agreement pursuant to subsection (2)(b). If a utility does not intend to develop the site for future commercial use, the agreement pursuant to subsection (2)(b) is not required.

(5) In determining the utility with a service area nearest the site, all measurements must be made on the shortest vector that can be drawn from the line nearest the service area to the nearest portion of the geothermal site.

(6) Prior to September 1 of each even-numbered year, the bureau shall update the energy and telecommunications interim committee on research conducted pursuant to this section and funding received pursuant to 90-3-1302.

~~[(a) a ranking of the top five locations in Montana that offer the best opportunity for near-term development of geothermal energy; and~~

~~(b) an estimate of the cost associated with development of each site.]~~"

Section 47. Section 8, Chapter 330, Laws of 2009, is amended to read:

"**Section 8. Termination.** ~~[Section 3] terminates~~ *[Sections 1 and 3] terminate* June 30, 2013."

Section 48. Repealer. The following section of the Montana Code Annotated is repealed:

5-11-221. Distribution of proceedings of 1972 constitutional convention.

Section 49. Directions to code commissioner. The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 62nd legislature.

Approved March 16, 2011

CHAPTER NO. 20

[SB 62]

AN ACT ELIMINATING THE PUBLIC SERVICE COMMISSION'S ABILITY TO ASSIGN CUSTOMERS TO ELECTRICITY BUYING COOPERATIVES; AMENDING SECTION 35-19-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-19-107, MCA, is amended to read:

"35-19-107. Membership. (1) Membership in a buying cooperative is restricted to small customers of a distribution utility.

(2) A member may join a buying cooperative by the methods prescribed in the buying cooperative's bylaws ~~or may be assigned to a buying cooperative by the public service commission, as provided by commission rule~~."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 2011

CHAPTER NO. 21

[SB 72]

AN ACT REVISING THE AUTHORITY OF THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR COMMUNITY CORRECTIONS PROGRAMS; AND AMENDING SECTION 53-1-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) *subject to subsection (6),* adopt rules necessary*:*

(i) to carry out the purposes of 41-5-125~~, rules necessary~~*;*

(ii) for the siting, establishment, and expansion of prerelease centers~~, rules~~*;*

(iii) for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process;

(iv) for the establishment and maintenance of residential methamphetamine treatment programs~~,~~*;* and

(v) ~~rules~~ for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law~~.~~*;*

~~However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.~~

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations *or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments* to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103, except as provided in 41-5-2012;

(h) collect and disseminate information relating to youth who are committed to the department for placement in a state youth correctional facility;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for youth who are committed to the department for placement in a state youth correctional facility;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department may contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program. If the department intends to contract for that purpose, the department shall adopt rules for the establishment and maintenance of that program.

(3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(4) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for delinquent youth in state youth correctional facilities or on juvenile parole supervision.

(5) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing.

(6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community

support for or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3."

Approved March 16, 2011

CHAPTER NO. 22

[HB 39]

AN ACT ADOPTING THE MOST RECENT APPLICABLE FEDERAL MILITARY LAWS AND REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE IN THE MONTANA NATIONAL GUARD; AMENDING SECTION 10-1-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

"10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2009~~ *2011*, insofar as they are applicable and not inconsistent with the constitution and laws of this state or with a rule or regulation adopted pursuant to 10-1-105, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2009~~ *2011*, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution and laws of this state, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or with a rule or regulation adopted pursuant to 10-1-105, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

Section 2. Applicability. [This act] applies to events that occur and proceedings begun on or after October 1, 2011.

Approved March 18, 2011

CHAPTER NO. 23

[HB 76]

AN ACT RELIEVING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE POWER TO REMOVE OBSTRUCTIONS IN FLOODWAYS; ELIMINATING THE OBSTRUCTION PERMIT FEE AND THE FLOODWAY OBSTRUCTION REMOVAL FUND; AMENDING SECTIONS 76-5-208 AND 76-5-405, MCA; REPEALING SECTIONS 76-5-206 AND 76-5-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-5-208, MCA, is amended to read:

"76-5-208. Orders and rules. (1) The department may adopt orders and rules ~~that are necessary~~ to implement parts 1 through 4 of this chapter. All orders and rules must be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

~~(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order may not become effective less than 10 days after a hearing is held relating to the order.~~

~~(3)~~*(2)* In addition to any requirement imposed by 76-5-202 through 76-5-205, ~~when an order is issued that affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing must be mailed to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined.~~ *the department shall provide notice by mail to the titleholder of land adjacent to a watercourse or drainway that would be specifically affected by a proposed order. The notice must be provided at least 10 days prior to a hearing, if one is required, or at least 10 days prior to the effective date of the order if a hearing is not required.*"

Section 2. Section 76-5-405, MCA, is amended to read:

"76-5-405. Variance for obstruction or nonconforming use. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses that would otherwise violate 76-5-401 through 76-5-404. The application for the permit must be submitted to the department or the responsible political subdivision and contain the information that the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated flood plain or designated floodway of watercourses must be ~~specifically~~ approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated flood plains or designated floodways are conclusively considered to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after a time that the department or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to 76-5-406 and this section.

~~(3) An application for a permit must be accompanied by a nonrefundable application fee of $10, which the state treasurer shall credit to the floodway obstruction removal fund.~~

~~(4)~~*(3)* The department or the responsible political subdivision may ~~make a part of~~ *issue* the permit ~~any~~ *with* reasonable conditions ~~that it may consider advisable. In order for the permit to continue to remain in force, the~~ *The permitted* obstruction or use must be maintained ~~so as to comply with the conditions and specifications of~~ *in compliance with* the permit."

Section 3. Repealer. The following sections of the Montana Code Annotated are repealed:

76-5-206. Powers and duties of department relative to obstructions.

76-5-207. Floodway obstruction removal fund.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 18, 2011

CHAPTER NO. 24

[HB 97]

AN ACT TRANSFERRING THE RESPONSIBILITY FOR THE SUPERVISION OF THE OFFICE OF APPELLATE DEFENDER FROM THE CHIEF PUBLIC DEFENDER TO THE PUBLIC DEFENDER COMMISSION; AMENDING SECTIONS 2-18-103, 47-1-103, 47-1-104, 47-1-105, 47-1-201, 47-1-205, AND 47-1-216, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed by the chief public defender*; and*

(22) chief appellate defender in the office of appellate defender."

Section 2. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Commission" means the public defender commission established in 2-15-1028.

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

(4) "Office" means the office of state public defender established in 47-1-201.

(5) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter*, including attorneys employed by or under contract with the office of appellate defender*.

(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

Section 3. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system — structure and scope of services — assignment of counsel at public expense. (1) There is a statewide public defender system, which ~~must~~ *is required to* deliver public defender services in all courts in this state. ~~The~~ *The* system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) ~~Beginning July 1, 2006, when~~ *When* a court orders the office *or the office of appellate defender* to assign counsel, the *appropriate* office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the ~~office makes~~ *offices make* appropriate assignments in a timely manner.

(4) ~~Beginning July 1, 2006, a~~ *A* court may order ~~the~~ *an* office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice of Abortion Act, as provided in 50-20-212;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 4. Section 47-1-105, MCA, is amended to read:

"47-1-105. Commission — duties — report — rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

(1) *(a)* establish the qualifications, duties, and compensation of the chief public defender, as provided in 47-1-201, appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender; *and*

(b) establish the qualifications, duties, and compensation of the chief appellate defender, as provided in 47-1-205, appoint a chief appellate defender after considering qualified applicants, and regularly evaluate the performance of the chief appellate defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types*, including cases on appeal,* in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender*,* ~~and~~ the administrative director*, and the chief appellate defender*;

(4) review and approve any proposal to create permanent staff positions;

(5) establish policies and procedures for identifying cases in which public defenders may have a conflict of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:

(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(b) all standards established or being considered by the commission*,* ~~or~~ the chief public defender*, or the chief appellate defender*;

(c) the number of deputy public defenders and the region supervised by each;

(d) the number of public defenders employed or contracted with in the system, identified by region;

(e) the number of attorney and nonattorney staff supervised by each deputy public defender;

(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(g) the total number of persons represented by the office *and the office of appellate defender*, identified by region, court, and case type;

(h) the annual caseload and workload of each public defender *and the office of appellate defender*, identified by region, court, and case type;

(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(k) detailed expenditure data by court and case type."

Section 5. Section 47-1-201, MCA, is amended to read:

"47-1-201. Office of state public defender — personnel — compensation — expenses — reports. (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan~~,~~ as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office *of state public defender* and to implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan~~,~~ as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

~~(ii) a chief appellate defender;~~

~~(iii)~~*(ii)* a chief contract manager to oversee and enforce the contracting program;

~~(iv)~~*(iii)* a training coordinator, appointed as provided in 47-1-210;

~~(v)~~*(iv)* deputy public defenders, as provided in 47-1-215;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.

~~(8)~~*(9)* The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section*, including defense expenses paid for work performed by or for the office of appellate defender*.

~~(9)~~*(10)* (a) The office of public defender is required to report data for each fiscal year *by September 30 of the subsequent fiscal year* representing the caseload for the entire public defender system to the legislative finance committee. The report must include data for both employee and contract attorneys, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010.~~

(b) The office of public defender is required to report to the legislative finance committee for each fiscal year *by September 30 of the subsequent fiscal year* on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010.~~"

Section 6. Section 47-1-205, MCA, is amended to read:

"47-1-205. Office of appellate defender — chief appellate defender. (1) There is ~~within the office~~ an office of appellate defender. The office of appellate defender must be located in Helena, Montana.

(2) *(a)* ~~Beginning July 1, 2006, the chief public defender~~ *The commission* shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender. *The chief appellate defender is appointed by and serves at the pleasure of the commission. The commission shall establish*

compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The chief appellate defender must be an attorney licensed to practice law in the state.

(c) The position of chief appellate defender is exempt from the state classification and pay plan as provided in 2-18-103.

(3) The chief appellate defender shall:

(a) *direct,* manage, and supervise all public defender services provided by the office of appellate defender*, including budgeting, reporting, and related functions*;

(b) ensure that when a court orders the office *of appellate defender* to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202(7) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;

(e) contract for services as provided in 47-1-216 and as authorized by the ~~chief public defender~~ *commission* according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the *office of* appellate defender ~~office~~ and submit records and reports to the ~~chief public defender~~ *commission* as requested *through the office of state public defender*;

(g) implement standards and procedures established by the commission ~~and the chief public defender~~ for the office of appellate defender;

(h) maintain a minimum client caseload as determined by the ~~chief public defender~~ *commission*; ~~and~~

(i) confer with the chief public defender on budgetary issues and submit budgetary requests and the reports required by law or by the governor through the chief public defender; and

~~(i)~~*(j)* perform all other duties assigned to the chief appellate defender by the ~~chief public defender~~ *commission*."

Section 7. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services — rules. (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region *and that contracting for appellate defender services is done fairly and consistently statewide*.

(2) ~~Beginning July 1, 2006, the~~ *The* state *public defender* office and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. *The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver*

appellate defender services in the state. All contracting pursuant to this section is exempt from the Montana Procurement Act~~,~~ as provided in 18-4-132.

(3) Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(4) Contracting for public defender *and appellate defender* services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

(5) The chief public defender*,* ~~and~~ deputy public defenders*, and the chief appellate defender* shall provide for contract oversight and enforcement to ensure compliance with established standards.

(6) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender *and appellate defender* services and for others contracted to provide nonattorney services."

Section 8. Effective date. [This act] is effective July 1, 2011.

Approved March 18, 2011

CHAPTER NO. 25

[HB 182]

AN ACT PROVIDING AUTHORITY TO PUBLIC SCHOOLS TO FINANCE ENERGY CONSERVATION MEASURES; EXTENDING THE TERM OF AN OBLIGATION FOR A QUALIFIED ENERGY PROJECT TO 15 YEARS; AMENDING SECTIONS 20-9-421 AND 20-9-471, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-421, MCA, is amended to read:

"20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction. A school district ~~shall~~ *may* not issue bonds for any purpose other than that provided in 15-1-402*,* ~~and~~ 20-9-412*, and 20-9-471* unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue ~~such~~ *the* bonds. A school district bond election ~~shall~~ *must* be called by a resolution as prescribed under the provisions of 20-20-201 when:

(1) the trustees, of their own volition, adopt a resolution to that effect; or

(2) the trustees have received a petition ~~which~~ *that* asks ~~that~~ *for* an election *to* be held to consider a bond proposition and ~~which~~ *that* has been validated under the provisions of 20-9-425."

Section 2. Section 20-9-471, MCA, is amended to read:

"20-9-471. Issuance of obligations — authorization — conditions. (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, ~~and~~ electrical systems~~;~~*, and conservation measures as defined in 90-4-1102;*

(c) any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and

(d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation, including an obligation for a qualified energy project, may not exceed ~~10~~ *15* fiscal years. For the purposes of this subsection, a "qualified energy project" means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) Except as provided in 20-9-502 and 20-9-503, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:

(a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;

(b) the 20% square footage limitation may not be exceeded within any 5-year period; and

(c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments for the construction project. The proposition must be approved at a special or regular election in accordance with all of the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.

(5) The school district may not submit for a vote of the electors of the district a proposition to impose a levy to pay the principal or any interest on an obligation that is payable from the conservation-related cost savings under energy performance contracts as defined in 90-4-1102.

(6) The obligation must state clearly on its face that the obligation is not secured by a pledge of the school district's taxing power but is payable from amounts in its general fund or other legally available funds.

~~(5)~~*(7)* An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

~~(6)~~*(8)* The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

~~(7)~~*(9)* The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 18, 2011

CHAPTER NO. 26

[SB 63]

AN ACT REVISING BUSINESS ENTITY STATUTES; STANDARDIZING ADDRESS REFERENCES FOR CERTAIN BUSINESS ENTITIES; ELIMINATING CERTAIN REFERENCES TO THE BOARD OF REVIEW; MODIFYING REGISTRATION REQUIREMENTS FOR LIMITED LIABILITY PARTNERSHIPS; CONSOLIDATING REQUIREMENTS FOR REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION OF A LIMITED LIABILITY COMPANY; CLARIFYING REQUIREMENTS FOR RENEWAL OF BUSINESS NAME AND TRADEMARK REGISTRATION; AMENDING SECTIONS 30-13-203, 30-13-206, 30-13-207, 30-13-213, 30-13-217, 30-13-313, 30-16-301, 35-1-216, 35-1-1028, 35-1-1029, 35-1-1104, 35-2-213, 35-2-822, 35-2-904, 35-3-209, 35-8-202, 35-8-208, 35-8-912, 35-8-1003, 35-10-102, 35-10-701, 35-12-601, 35-12-610, AND 35-12-1302, MCA; AND REPEALING SECTION 35-8-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-203, MCA, is amended to read:

"30-13-203. Application for registration of assumed business name. A person transacting business in this state under an assumed business name shall register with the secretary of state, on forms furnished by the secretary of state ~~or by electronic means established by the board of review established in 30-16-302~~, an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and *business mailing* address~~, including the street name and number,~~ of *the* applicant;

(2) the complete ~~name of the~~ proposed assumed business name;

(3) the date of first use, in commerce, of the proposed assumed business name; and

(4) a description of business transacted under the proposed assumed name."

Section 2. Section 30-13-206, MCA, is amended to read:

"30-13-206. Term and renewal of assumed business name registration. (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state ~~or by electronic means established by rule by the board of review established in 30-16-302~~, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of

record of the pending expiration by addressing a notice to the last-known address of the applicant.

(3) ~~(a) Subject to subsection (3)(b), if~~ *If* the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration.

~~(b) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership.~~"

Section 3. Section 30-13-207, MCA, is amended to read:

"30-13-207. Application for renewal of assumed business name. An application for renewal of registration of an assumed business name must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

(1) the complete assumed business name;

(2) the name and *business mailing* address~~, including street name and number, if any,~~ of the applicant; and

(3) a description of business transacted."

Section 4. Section 30-13-213, MCA, is amended to read:

"30-13-213. Voluntary cancellation of registration of assumed business name. (1) When the registrant of record of a registered assumed business name wishes to cancel the registration, the registrant shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of an assumed business name, which must include but not be limited to the following information:

(a) the complete ~~name of the~~ registered assumed business name to be canceled; and

(b) the name and *business mailing* address~~, including the street name and number, if any,~~ of the registrant of record.

(2) If the secretary of state finds the affidavit complies with the provisions of this section, the secretary of state shall file it and mail a letter acknowledging cancellation of the filing to the registrant of record."

Section 5. Section 30-13-217, MCA, is amended to read:

"30-13-217. Fees and charges to be established and collected by secretary of state. (1) The secretary of state shall establish, charge, collect, and deposit, in accordance with 2-15-405:

(a) fees for filing documents and issuing certificates pursuant to this part; *and*

(b) miscellaneous charges for other services provided by the secretary of state pursuant to this part~~; and~~

~~(c) a license fee from each limited liability partnership at the time of registration under 30-13-203 and at the time of each renewal of registration under 30-13-206 through 30-13-208~~.

(2) Fees and charges may be paid by credit card and may be discounted for payment processing charges paid by the secretary of state to a third party."

Section 6. Section 30-13-313, MCA, is amended to read:

"30-13-313. Duration and renewal. (1) Registration of a mark under this part is effective for a term of 5 years from the date of registration, and upon

application filed within 6 months prior to the expiration of that term, in a manner complying with the requirements of the secretary of state, the registration may be renewed for another 5 years.

(2) The application for renewal of mark registration must be accompanied by a filing fee as provided for in 30-13-320.

(3) A registration may be renewed for successive periods of 5 years as provided in subsection (1).

(4) Any registration in force on July 1, 2003, continues in full force and effect for the unexpired term of the registration and may be renewed by filing an application for renewal with the secretary of state complying with the requirements of the secretary of state and paying the renewal fee within 6 months prior to the expiration of the registration.

(5) All applications for renewal under this part must include a verified statement that the mark has been and is still in use, ~~and include~~ a specimen showing actual use of the mark on or in connection with the goods or services, *and the following information:*

(a) the original identification number assigned by the secretary of state;

(b) the name subscribed for the mark;

(c) the name and business mailing address of the person claiming ownership of the mark;

(d) if a corporation, the state of incorporation or, if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary of state; and

(e) the class of goods or services and a description of the goods or services on or in connection with which the mark is used."

Section 7. Section 30-16-301, MCA, is amended to read:

"30-16-301. Business registration and licensing plan — administration. (1) The provisions of 16-11-120, 16-11-122, 30-12-203, ~~30-13-203, 30-13-206, 30-13-210, 30-13-217,~~ 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, ~~30-13-203, 30-13-206, 30-13-210, 30-13-217,~~ 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

(a) an anniversary date for license renewal that is set by the board of review;

(b) an electronic means of verifying the information required in the license application; and

(c) payment of fees required for licensure by credit card, debit card, or other commercially acceptable means as provided in 15-1-231.

(2) The department shall designate an employee in charge of administering the plan whose duties include those of executive secretary of the board of review."

Section 8. Section 35-1-216, MCA, is amended to read:

"35-1-216. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-1-308;

(b) the number of shares the corporation is authorized to issue;

(c) (i) the information required by 35-7-105(1); and

(ii) the name of its initial registered agent; and

(d) the name and *business mailing* address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and complete street addresses of the individuals who are to serve as the initial directors;

(b) provisions consistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) a par value for authorized shares or classes of shares; and

(v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of 35-1-713; or

(iv) an intentional violation of criminal law.

(3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter."

Section 9. Section 35-1-1028, MCA, is amended to read:

"35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;

(b) the name of the state or country under whose law it is incorporated;

(c) its date of incorporation and period of duration;

(d) the ~~street~~ *business mailing* address of its principal office;

(e) the information required by 35-7-105(1);

(f) the names and usual business addresses of its current directors and officers; and

(g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated."

Section 10. Section 35-1-1029, MCA, is amended to read:

"35-1-1029. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if *the corporation* ~~it~~ changes:

(a) its corporate name;

(b) the period of its duration;

(c) any of the information required by 35-7-105(1); ~~or~~

(d) the state or country of its incorporation*; or*

(e) other corporate information that is recorded in its state or country of incorporation but not listed in subsections (1)(a) through (1)(d).

(2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section."

Section 11. Section 35-1-1104, MCA, is amended to read:

"35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report, executed as provided in 35-1-217, that sets forth:

(a) the name of the corporation and the jurisdiction under whose law it is incorporated;

(b) the information required by 35-7-105(1);

(c) the *business mailing* address of its principal office, wherever located;

(d) the names *and business mailing addresses* of its principal officers, except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead; and

(e) the names *and business mailing addresses* of its directors, except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

Section 12. Section 35-2-213, MCA, is amended to read:

"35-2-213. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-2-305;

(b) a statement that:

(i) the corporation is a public benefit corporation;

(ii) the corporation is a mutual benefit corporation; or

(iii) the corporation is a religious corporation;

(c) the information required by 35-7-105(1);

(d) the name and *business mailing* address of each incorporator;

(e) whether or not the corporation will have members; and

(f) provisions consistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

(a) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(b) the names and *business mailing* addresses of the individuals who are to serve as the initial directors;

(c) provisions consistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or any class of members; and

(iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(d) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(e) provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of a director's duties to the corporation and its members, provided that the provision may not eliminate or limit the liability of a director:

(i) for a breach of the director's duty of loyalty to the corporation or its members;

(ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(iii) for a transaction from which a director derived an improper personal economic benefit; or

(iv) under 35-2-418, 35-2-435, or 35-2-436.

(3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(4) Each incorporator and director named in the articles shall sign the articles.

(5) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter."

Section 13. Section 35-2-822, MCA, is amended to read:

"35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;

(b) the name of the state or country under whose law it is incorporated;

(c) the date of incorporation and period of duration;

(d) the ~~street address and, if different, the~~ *business* mailing address of its principal office;

(e) the information required by 35-7-105(1);

(f) the names and ~~usual~~ business ~~or home~~ *mailing* addresses of its current directors and officers;

(g) whether the foreign corporation has members;

(h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and

(i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated."

Section 14. Section 35-2-904, MCA, is amended to read:

"35-2-904. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report on a form prescribed and furnished by the secretary of state that sets forth:

(a) the name of the corporation and the jurisdiction under whose law it is incorporated;

(b) the information required by 35-7-105(1);

(c) the *business mailing* address of its principal office, wherever located;

(d) the names and business ~~or residence~~ *mailing* addresses of its directors and principal officers;

(e) a brief description of the nature of its activities; and

(f) whether or not it has members.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

Section 15. Section 35-3-209, MCA, is amended to read:

"35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act an annual report on forms or in a computerized format prescribed by the secretary of state, setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the *business mailing* address of the principal office of the corporation, wherever located, and the information specified by 35-7-105(1);

(c) the names and ~~respective~~ *business mailing* addresses of the present members of the board of advisers or consultors of the corporation.

(2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by the chief corporate officer."

Section 16. Section 35-8-202, MCA, is amended to read:

"35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) the complete ~~street~~ *business mailing* address of its principal office, wherever located;

(d) the information required by 35-7-105(1);

(e) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and ~~street~~ *business mailing* addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and ~~street~~ *business mailing* addresses of the initial members;

(f) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(g) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(h) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment."

Section 17. Section 35-8-208, MCA, is amended to read:

"35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the jurisdiction under whose law it is organized;

(b) the information required by 35-7-105(1);

(c) the *business mailing* address of its principal office, wherever located;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and ~~street~~ *business mailing* addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect *and the names and business mailing addresses of the members*;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to the limited liability company for correction.

(5) The annual report must be executed by at least one member of the limited liability company or by the authorized agent.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification."

Section 18. Section 35-8-912, MCA, is amended to read:

"35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved *under the provisions of 35-8-209* may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution *to restore its right to carry on business in this state and to exercise all its privileges and immunities*. ~~The applicant shall file an official application. The application must~~ *A limited liability company applying for reinstatement shall submit to the secretary of state an official application, executed by a person who was a member or manager at the time of dissolution, setting forth*:

~~(a) recite the name of the company and the effective date of its administrative dissolution;~~

~~(b) state that the ground for dissolution either did not exist or has been eliminated;~~

~~(c) state that the company's name satisfies the requirements of 35-8-103;~~

~~(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and~~

~~(c) include all annual reports not yet filed with the secretary of state.~~

(a) the name and business mailing address of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(2) The limited liability company shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) all annual reports not yet filed with the secretary of state.

~~(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.~~

~~(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.~~

(3) When all requirements of subsections (1) and (2) are met and the secretary of state reinstates the limited liability company, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand and receipt of the specified fee, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(4) The secretary of state may not order a reinstatement if 5 years have elapsed since the date of dissolution.

(5) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was administratively dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization."

Section 19. Section 35-8-1003, MCA, is amended to read:

"35-8-1003. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of 35-8-1009;

(b) the name of the jurisdiction under whose law it is organized;

(c) its date of organization and period of duration;

(d) the ~~street~~ *business mailing* address of its principal office, wherever located;

(e) the information required by 35-7-105(1); and

(f) the names and ~~usual~~ business *mailing* addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the jurisdiction under whose law the foreign limited liability company is organized."

Section 20. Section 35-10-102, MCA, is amended to read:

"35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "Business" includes every trade, occupation, or profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Limited liability partnership" means a partnership registered under 35-10-701 and includes both domestic and foreign limited liability partnerships.

(5) (a) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.

(b) The term includes but is not limited to a limited liability partnership for all purposes of the laws of this state and all licensing laws, whether for professionals or otherwise.

(6) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(7) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(8) "Person" means:

(a) an individual;

(b) a corporation;

(c) a business trust;

(d) an estate;

(e) a trust;

(f) a partnership;

(g) an association;

(h) a joint venture;

(i) a government;

(j) a governmental subdivision, agency, or instrumentality; or

(k) any other legal or commercial entity.

(9) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(10) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(11) "Statement" means a statement of partnership authority under 35-10-310, a statement of denial under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under 35-10-627, a statement of merger under 35-10-643, an application for registration of assumed business name or a renewal of registration ~~under 35-10-701~~, or an amendment, cancellation, or withdrawal of the foregoing.

(12) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance."

Section 21. Section 35-10-701, MCA, is amended to read:

"35-10-701. Registration of limited liability partnerships. (1) To become a limited liability partnership, a partnership shall file with the secretary of state an application for registration ~~of an assumed business name,~~ on a form furnished by the secretary of state~~,~~ that indicates an intention to register as a limited liability partnership under this section. ~~The registration of a limited liability partnership under this section is subject to all of the terms and conditions otherwise applicable to the registration of an assumed business name pursuant to Title 30, chapter 13, part 2.~~

(2) The application for registration of ~~an assumed business name~~ *a limited liability partnership* must be executed by ~~one~~ *two* or more partners authorized to execute the application and registration *and must contain the following information:*

(a) the name and business mailing address of the limited liability partnership;

(b) the date of first use, in commerce, of the proposed limited liability partnership;

(c) a description of business transacted by the limited liability partnership; and

(d) the name and business mailing address of each of the partners.

(3) The secretary of state shall register as a limited liability partnership any partnership that substantially complies with ~~Title 30, chapter 13, part 2, and~~ this section.

(4) A partnership's registration under this section is effective when the secretary of state files the partnership's application for registration ~~of an assumed business name~~ under subsection (1) and remains in effect until it is canceled by the secretary of state ~~pursuant to Title 30, chapter 13, part 2~~.

(5) The fact that an application for registration ~~of an assumed business name~~ *of a limited liability partnership* under this section or any renewals ~~of the assumed business name~~ *of that partnership* ~~is~~ *are* on file with the office of the secretary of state is notice that the partnership is a limited liability partnership and is notice of all other facts set forth in the application.

(6) The secretary of state shall provide necessary forms for the registration of a limited liability partnership under ~~subsection~~ *subsections* (1) *and (2)* or any renewals of registration."

Section 22. Term and renewal of limited liability partnership registration. (1) Registration of a limited liability partnership is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of the registration of a limited liability partnership, the secretary of state shall notify the limited

liability partnership of the pending expiration by mailing a notice to the business mailing address of the limited liability partnership.

(3) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership.

Section 23. Application for renewal of limited liability partnership registration. An application for renewal of registration of a limited liability partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

(1) the complete name and business mailing address of the limited liability partnership;

(2) the name and business mailing address of each partner; and

(3) a description of business being transacted.

Section 24. Amendment to registration of limited liability partnership. An amendment to registration of a limited liability partnership must be filed with the secretary of state within 1 year after any one of the following events occurs:

(1) there is a change in the name or identity of the partners transacting or having interest in the limited liability partnership;

(2) there is a change in the description of the business transacted;

(3) a partner having an interest in the limited liability partnership withdraws from the business or dies; or

(4) two or more partners apply to change the name of a registered limited liability partnership.

Section 25. Filing amendment to registration of limited liability partnership — issuance of certificate. (1) An application for amended registration of a limited liability partnership must be filed with the secretary of state and must include:

(a) the complete limited liability partnership name prior to adoption of the amendment;

(b) the complete new limited liability partnership name, if applicable;

(c) the business mailing address of the limited liability partnership;

(d) if the name of any partner to a limited liability partnership is to be changed, the new name of the partner;

(e) if a partner withdraws or dies, a statement that the person has withdrawn or died;

(f) a statement that the amended registration of limited liability partnership supersedes the original registration and all amendments to the original registration; and

(g) all other information determined by the secretary of state to be necessary to support an application.

(2) If the secretary of state finds that the application for amended registration of a limited liability partnership complies with this part and that all applicable fees have been paid, the secretary of state shall:

(a) endorse on the application for amendment the word "filed" and the date on which the application for amendment was filed;

(b) file the original application for amendment in the secretary of state's office; and

(c) issue to the limited liability partnership a certificate of amendment.

(3) If the limited liability partnership fails to comply with the requirements of this section, the secretary of state shall cancel the registration.

Section 26. Reservation of proposed limited liability partnership name. (1) An authorized person who has not commenced business but intends to commence business may reserve a limited liability partnership name for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state, an application for reservation of a limited liability partnership name.

(2) The proposed limited liability partnership name may not be the same as or indistinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state.

(3) An applicant for a proposed limited liability partnership name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

Section 27. Filing application for reservation of limited liability partnership name — issuance of certificate. (1) A person seeking to reserve a limited liability partnership name shall submit a completed application and all applicable fees to the secretary of state.

(2) The application for a proposed limited liability partnership name must include but is not limited to the following information:

(a) the complete limited liability partnership name to be reserved;

(b) the name and business mailing address of the limited liability partnership;

(c) the date the limited liability partnership intends to commence business; and

(d) a description of business that the limited liability partnership intends to transact.

(3) If the secretary of state finds the application complies with the provisions of this part, the secretary of state shall:

(a) endorse on the application the word "filed" and the date on which the application was filed;

(b) file the application in the secretary of state's office; and

(c) issue a certificate of reservation to the person who submits the application.

Section 28. Voluntary cancellation of registration of limited liability partnership. (1) When a limited liability partnership wishes to cancel its registration, two or more partners shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of a limited liability partnership, which must include but is not limited to the following information:

(a) the complete name of the registered limited liability partnership to be canceled;

(b) the business mailing address of the limited liability partnership; and

(c) the names and business mailing addresses of the partners.

(2) If the secretary of state finds the affidavit complies with the provisions of this section, the secretary of state shall file it and mail a letter acknowledging cancellation of the registration to the limited liability partnership.

Section 29. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties for false swearing, by each person executing the document that the statements in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under this part.

Section 30. Evidentiary effect of certificates and documents of secretary of state. All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of documents filed in the office of the secretary of state in accordance with the provisions of this part when certified by the secretary of state must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated in the certificates or documents.

Section 31. Effect of transacting business without certificate. A person conducting or transacting business in this state as a limited liability partnership without an effective certificate of registration of a limited liability partnership name or a person having an interest in the limited liability partnership name may not maintain any suit or action in the courts of this state under the name.

Section 32. Section 35-12-601, MCA, is amended to read:

"35-12-601. Certificate of limited partnership. (1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

(a) the name of the limited partnership;

(b) the information required by 35-7-105(1);

(c) the name and the ~~complete~~ business ~~street~~ *mailing* address of each general partner; and

(d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section."

Section 33. Section 35-12-610, MCA, is amended to read:

"35-12-610. Term and renewal of certification. (1) Certification of a *domestic or foreign* limited partnership is effective for a term of 5 years from the date of filing or renewal of certification *or the date of issuance of a certificate under 35-12-1303*. Upon application for renewal of certification on forms furnished by the secretary of state, the certification may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of certification of a limited partnership, the secretary of state shall notify the listed general partner or partners or specified agent of the pending expiration by addressing a notice to the last-known address of the general partner or partners or specified agent.

(3) If the general partner or partners or specified agent ~~fail~~ *fails* to file an application for renewal with the secretary of state within a 90-day period prior

to the expiration date of the certification, the secretary of state shall cancel the certification.

(4) A registration in force on July 1, 1991, expires 5 years from the date of the filing of certification or on July 1, 1992, whichever is later, if renewal of the certification is not effected in the manner provided for in 35-12-610 through 35-12-613."

Section 34. Application for renewal of foreign limited partnership certification — requirement for appointed registered agent. (1) The application for renewal of certification of a foreign limited partnership must be executed by the general partners and delivered to the secretary of state. The application must include the following information:

(a) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(b) the name and address of the registered agent appointed by the foreign limited partnership for the service of process on the foreign limited partnership; and

(c) the name and business mailing address of each general partner.

(2) A registered agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state.

Section 35. Section 35-12-1302, MCA, is amended to read:

"35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(2) the state in which the foreign limited partnership was formed and the date of the foreign limited partnership's formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint. An agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state.

(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if an agent was appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(5) the *business mailing* address of the office required to be maintained in the state of the foreign limited partnership's organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business *mailing* address of each general partner; and

(7) the *business mailing* address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those

records until the foreign limited partnership's registration in this state is canceled or withdrawn."

Section 36. Repealer. The following section of the Montana Code Annotated is repealed:

35-8-210. Reinstatement of dissolved limited liability company.

Section 37. Codification instruction. (1) [Sections 22 through 31] are intended to be codified as an integral part of Title 35, chapter 10, part 7, and the provisions of Title 35, chapter 10, part 7, apply to [sections 22 through 31].

(2) [Section 34] is intended to be codified as an integral part of Title 35, chapter 12, part 13, and the provisions of Title 35, chapter 12, part 13, apply to [section 34].

Approved March 18, 2011

CHAPTER NO. 27

[SB 78]

AN ACT REVISING THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT AND INCORPORATING MODEL ACT LANGUAGE; CLARIFYING APPLICABILITY TO IMPAIRED AND INSOLVENT INSURERS; REVISING THE POWERS AND DUTIES OF THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION; PROVIDING 60 DAYS FOR THE COMMISSIONER TO DISAPPROVE THE ASSOCIATION'S PLAN OF OPERATION OR AMENDMENTS TO THE PLAN; ELIMINATING CERTAIN REPORTING REQUIREMENTS; CHANGING THE STAY OF PROCEEDINGS AGAINST AN INSOLVENT INSURER TO 180 DAYS FROM 60 DAYS; CLARIFYING COVERAGE LIMITS AND INCREASING CERTAIN LIMITS; ALLOWING APPLICATION TO A RECEIVERSHIP COURT FOR DISBURSEMENT OF AN INSOLVENT INSURER'S ASSETS; PROHIBITING DISTRIBUTIONS TO STOCKHOLDERS OR OWNERS OF IMPAIRED OR INSOLVENT INSURERS UNTIL VALID CLAIMS ARE PAID WITH INTEREST; REQUIRING AT LEAST 180 DAYS' NOTICE OF AUTHORIZED ASSESSMENTS AND REVISING THE ASSESSMENT PROCESS; INCORPORATING EXISTING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-10-201, 33-10-202, 33-10-205, 33-10-210, 33-10-216, 33-10-217, 33-10-222, 33-10-223, 33-10-224, 33-10-225, 33-10-226, AND 33-10-227, MCA; REPEALING SECTIONS 33-10-219, 33-10-220, AND 33-10-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-10-201, MCA, is amended to read:

"33-10-201. Short title, purpose, ~~scope,~~ and construction. (1) This part may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer issuing the policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments or insolvencies.

~~(4) This part applies to direct, nongroup life, health, and annuity policies and contracts and their supplemental contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, lottery annuities issued in connection with government lotteries, and any immediate or deferred annuity contracts.~~

~~(5) This part provides coverage for policies and contracts specified in subsection (4):~~

~~(a) to persons who are owners of or certificate holders under covered policies or contracts, other than unallocated annuity contracts and structured settlement annuities that are provided for in subsections (6) and (7), if the persons:~~

~~(i) are residents; or~~

~~(ii) are not residents, but only under all of the following conditions:~~

~~(A) the insurers that issued the policies are domiciled in this state;~~

~~(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;~~

~~(C) the state has an association similar to the association created under this part; and~~

~~(D) the persons are not eligible for coverage by that association; and~~

~~(b) to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).~~

~~(6) With respect to unallocated annuity contracts, this part provides coverage to:~~

~~(a) persons who are the owners of unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and~~

~~(b) persons who are owners of unallocated annuity contracts issued in connection with government lotteries if the owners are residents.~~

~~(7) (a) With respect to structured settlement annuities, this part provides coverage to a person who is:~~

~~(i) a payee under a structured settlement annuity;~~

~~(ii) a beneficiary of a payee if the payee is deceased; or~~

~~(iii) a resident payee, regardless of where the contract owner resides.~~

~~(b) This part also applies to a payee of a structured settlement annuity contract who is not a resident if:~~

~~(i) the contract owner of the structured settlement annuity is a resident, the insurer that issued the structured settlement annuity is domiciled in this state,~~

~~or the state in which the contract owner resides has an association similar to the association created by this part; and~~

~~(ii) the payee, beneficiary, or contract owner is not eligible for coverage by the association in the state in which the payee or contract owner resides.~~

~~(8) This part does not provide coverage to:~~

~~(a) a person who is a payee or a beneficiary of a contract owner who is the resident of another state if the payee or beneficiary is afforded any coverage by the association of another state; or~~

~~(b) a person described in subsection (5) if the person is afforded any coverage by the association of another state.~~

~~(9) (a) This part is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this part is provided coverage under the laws of any other state, the person may not be provided coverage under this part.~~

~~(b) In determining the application of this subsection (9) to situations in which a person, such as an owner, payee, beneficiary, or assignee, could be covered by the associations of more than one state, this part must be construed in conjunction with other state laws to result in coverage by only one association.~~

~~(10) This part does not provide coverage for:~~

~~(a) policies or contracts or any part of the policies or contracts not guaranteed by the member insurer or under which the risk is borne by the policyowner;~~

~~(b) a policy or contract or part of the policy or contract assumed by the impaired member insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;~~

~~(c) any portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:~~

~~(i) averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for the lesser period if the policy or contract was issued less than 4 years before the association became obligated; and~~

~~(ii) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as is most recently available;~~

~~(d) any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees, members, or others to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under:~~

~~(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;~~

~~(ii) a minimum premium group insurance plan;~~

~~(iii) a stop-loss group insurance plan; or~~

~~(iv) an administrative services only contract;~~

~~(e) any portion of a policy or contract to the extent that it provides dividends, experience rating credits, or voting rights or provides that any fees or allowances be paid to any person, including the policyowner or contract owner, in connection with the service to or administration of the policy or contract;~~

~~(f) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;~~

~~(g) any unallocated annuity contract issued to or in connection with an employee benefit plan that is protected under the federal pension benefit guaranty corporation regardless of whether the federal pension benefit guaranty corporation is liable to make any payments with respect to the employee benefit plan;~~

~~(h) any portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery;~~

~~(i) an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the policyowner or contract owner, including without limitation:~~

~~(i) claims based on marketing materials;~~

~~(ii) claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable requirements for filing policy forms or for policy approval;~~

~~(iii) misrepresentations of or regarding policy benefits;~~

~~(iv) extracontractual claims; or~~

~~(v) a claim for penalties or consequential or incidental damages;~~

~~(j) a contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; or~~

~~(k) a portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policyowner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this part. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this section, the interest or changes in value determined by using the procedures defined in the policy or contract must be credited as if the contractual date of crediting interest or changes in value was the date of impairment or insolvency and the interest or changes in value are not subject to forfeiture.~~

~~(11)~~*(4)* This part must be liberally construed to effect the purpose under subsections (2) and (3), which constitute an aid and guide to interpretation.

~~(12)~~*(5)* This part may not be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability."

Section 2. Section 33-10-202, MCA, is amended to read:

"33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means either of the two accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Authorized assessment" or "authorized" when used in the context of assessments means a specified amount of money authorized for collection from member insurers by a resolution of the board of directors, established in 33-10-204. The authorized assessment may be called for immediately or in the future. The assessment is authorized when the board passes the resolution.

~~(3)~~*(4)* "Benefit plan" means *a benefit plan for* a specific employee, union, or association of natural persons ~~benefit plan~~.

(5) "Called", when used in the context of assessments, means that the association has issued a notice to member insurers requiring that an authorized assessment be paid within the timeframe set forth within the notice. An authorized assessment becomes a called assessment when the association mails the notice to member insurers.

~~(4)~~*(6)* "Contractual obligation" means ~~any~~ *an* obligation under ~~covered policies~~ *any of the following for which coverage is provided in this part:*

(a) a policy or contract;

(b) a certificate under a group policy or contract; or

(c) a portion of a policy or contract or a portion of a certificate.

~~(5)~~*(7)* "Covered policy" means any policy or contract *or portion of a policy or contract for which coverage is provided* within the scope of this part ~~under 33-10-201(4) through (10)~~.

(8) "Extracontractual claims" includes but is not limited to those claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney fees and costs.

~~(6)~~*(9)* "Impaired insurer" means a member insurer that is not an insolvent insurer and that is placed under an order of rehabilitation or supervision by a court of competent jurisdiction.

~~(7)~~*(10)* "Insolvent insurer" means a member insurer that is placed under an order of liquidation by a court of competent jurisdiction upon a finding of insolvency.

~~(8)~~*(11)* (a) "Member insurer" means an insurer that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under ~~33-10-201 and 33-10-224~~ *this part* and includes any insurer whose license or certificate of authority *in this state* may have been suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The term does not include:

(i) a health service corporation;

(ii) a hospital or medical service organization, whether for profit or not for profit;

~~(ii)~~*(iii)* a health maintenance organization;

~~(iii)~~*(iv)* a fraternal benefit society;

~~(iv)~~*(v)* a mandatory state pooling plan;

~~(v)~~*(vi)* a mutual assessment company or any ~~entity~~ *other person* that operates on an assessment basis;

~~(vi)~~*(vii)* an insurance exchange;

~~(vii)~~*(viii)* an organization that has a certificate or license limited to the issuance of charitable gift annuities; or

~~(viii)~~*(ix)* an entity similar to any of the entities listed in subsections ~~(8)(b)(i)~~ *(11)(b)(i)* through ~~(8)(b)(vii)~~ *(11)(b)(viii)*.

~~(9)~~*(12)* "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or its successor.

~~(10)~~*(13) (a)* "Owner", "contract owner", and "policyowner" mean the person who is identified as the legal owner under the terms of a policy or contract or who is vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and who is properly recorded as the owner on the books of the insurer.

(b) The terms do not include a person with a mere beneficial interest in a policy or a contract.

~~(11)~~*(14)* "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

~~(12)~~*(15)* "Plan sponsor" means:

(a) the employer in the case of a benefit plan established or maintained by a single employer;

(b) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

(c) in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

~~(13)~~*(16)* (a) "Premiums" means the amount or consideration received on covered policies or contracts less return premiums, considerations, and deposits, and less dividends and experience credits.

(b) The term does not include:

(i) amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided pursuant to ~~33-10-201(10)~~ *this part*, except that an assessable premium may not be reduced based on ~~33-10-201(10)(c)~~ *33-10-224(2)(b)* relating to interest limitations and 33-10-224*(3)(b)* relating to one individual, one participant, and one contract owner;

(ii) premiums in excess of $5 million on an unallocated annuity contract not issued under a governmental retirement benefit plan or the plan's trustee established under section 401, 403(b), or 457 of the Internal Revenue Code; or

(iii) premiums in excess of $5 million with respect to multiple nongroup policies of life insurance owned by one owner, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons*, regardless of the number of policies or contracts held by the owner*.

~~(14)~~*(17)* "Principal place of business" ~~of a plan sponsor~~ means:

(a) *in the case of a plan sponsor,* the state in which more than 50% of the participants in the benefit plan are employed;

~~(b) with respect to a plan sponsor as defined in 33-10-202(12)(c), the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or~~

~~maintain the benefit plan, or, in lieu of specific or clear designation of a principal place of business, the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question; or~~

~~(c)~~*(b)* if 50% of the participants *of a benefit plan* are not employed in a single state *and for a person other than an individual*, the single state in which the individuals who establish policies for the direction, control, and coordination of the operations of the ~~plan sponsor~~ *entity* as a whole primarily exercise that function, as determined by the association in its reasonable judgment by considering the following factors:

(i) the state in which the primary executive and administrative headquarters ~~of the plan sponsor~~ is located;

(ii) the state in which the principal office of the chief executive officer ~~of the plan sponsor~~ is located;

(iii) the state in which the board of directors or similar governing ~~person or~~ persons ~~of the plan sponsor~~ conduct its meetings;

(iv) the state in which the executive or management committee of the board of directors or similar governing person or persons ~~of the plan sponsor~~ conduct the majority of ~~its~~ *their* meetings;

(v) the state from which the management of the overall operations ~~of the plan sponsor~~ is directed; and

(vi) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors*; or*

(c) with respect to a plan sponsor defined in subsection (15)(c), the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of specific or clear designation of a principal place of business, is the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

~~(15)~~*(18)* "Receivership court" means the court in the insolvent or impaired insurer's state that has jurisdiction over the supervision, rehabilitation, or liquidation of the insurer.

~~(16)~~*(19)* "Resident" means a person *to whom a contractual obligation is owed and* who resides in this state ~~at the time that the impairment is determined and to whom contractual obligations are owed~~ *on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer*. A person may be a resident of only one state, and in the case of a person other than an individual, the person is a resident of the state where its principal place of business is located. Citizens of the United States who are either residents of foreign countries or residents of the possessions, territories, or protectorates of the United States and who do not have an association similar to the association created by this part must be considered residents of the state of domicile of the insurer that issued the policies or contracts.

(20) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, or a United States possession, territory, or protectorate.

~~(17)~~*(21)* "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

~~(18)~~*(22)* "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or *a life, health, or annuity* contract.

~~(19)~~*(23)* "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 3. Section 33-10-205, MCA, is amended to read:

"33-10-205. ~~General powers~~ *Powers and duties* of association — ~~standing~~. *(1) If a member insurer is an impaired insurer, the association, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner, may:*

(a) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; and

(b) provide any money, pledges, loans, notes, guarantees, or other means to effectuate this section and ensure payment of the contractual obligations of the impaired insurer pending action under this section.

(2) If a member insurer is an insolvent insurer, the association, in its discretion, shall do one or more of the following:

(a) (i) guarantee, assume, or reinsure the policies or contracts of the insolvent insurer or cause the policies or contracts to be guaranteed, assumed, or reinsured or ensure payment of the contractual obligations of the insolvent insurer; and

(ii) provide money, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties;

(b) provide coverage and benefits with respect to a covered policy or contract for life or health insurance or annuities by:

(i) ensuring, for payment of identical premiums, payment of identical benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer for claims incurred:

(A) for group policies or contracts by not later than the earlier of the next renewal date, as specified in the policy or contract, or 45 days; or

(B) for nongroup policies, contracts, or annuities by the earlier of the next renewal date, if any, as specified in the policy or contract, or 1 year;

(ii) ensuring payment under subsection (2)(b)(i) not less than 30 days from the date on which the association becomes obligated with respect to the policies or contracts;

(iii) making diligent efforts to provide all known insureds and annuitants for nongroup policies and contracts or group policyowners with respect to group policies 30 days' notice of termination; and

(iv) (A) making available substitute coverage on an individual basis, with respect to nongroup life and health insurance policies and annuities covered by the association, to each known insured or annuitant or owner if other than the insured or annuitant and to an individual formerly insured or formerly an annuitant under a group policy if that individual is not eligible for replacement group coverage. This subsection (2)(b)(iv)(A) must be applied in accordance with the provisions of subsection (2)(b)(iv)(B), as applicable, if the insureds or annuitants had a right under law or if the terminated policy or annuity contained provisions to convert coverage to individual coverage or to continue an

individual policy or annuity in force until a specified age or a specified time, during which the insurer had no right to unilaterally make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(B) providing the substitute coverage required under subsection (2)(b)(iv)(A) either by issuing an alternative policy as provided in subsection (2)(b)(iv)(C) or reissuing the terminated coverage, as provided in subsection (2)(b)(iv)(D). Any reissued or alternative policy must be offered without requiring evidence of insurability and may not require a waiting period or exclusion that would not have applied under the terminated policy. The association may reinsure any reissued or alternative policy.

(C) submitting alternative policies adopted by the association to the commissioner or the receivership court for approval. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency. Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates adopted by the association. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured. The premium may not reflect any changes in the health of the insured after the original policy was last underwritten. Alternative policies issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(D) setting a premium at a premium different from that charged under the terminated policy if the association elects to reissue terminated coverage. The association shall set the premium in accordance with the amount of insurance provided and the age and class of risk. The premium is subject to approval by the commissioner. A premium may also be set by a court of competent jurisdiction.

(c) cease any of its obligations with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy on the date the coverage or policy is replaced by another similar policy by the policyowner, the insured, or the association; or

(d) ensure the payment or crediting of a rate of interest consistent with 33-10-224(2)(b)(iii) when proceeding under this section with respect to a policy or contract carrying guaranteed minimum interest rates.

(3) Except for claims incurred or any net cash surrender value that may be due in accordance with the provisions of this part, the association's obligation under the policy or contract terminates within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage for nonpayment of premiums.

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association. The association is liable only for unearned premiums due to policyowners or contract owners arising after the entry of the order of liquidation.

(5) If the association fails to act within a reasonable period of time, the commissioner has the powers and duties of the association under this part with respect to a domestic, foreign, or alien insolvent insurer.

(6) In carrying out its duties under subsections (1) through (4), the association may, subject to approval by a court of competent jurisdiction, impose:

(a) permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement if the association finds that:

(i) the amounts that can be assessed under this part are less than the amounts needed to ensure full and prompt performance of the association's duties under this part; or

(ii) the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of permanent policy or contract liens to be in the public interest; or

(b) (i) temporary moratoriums or liens on payments of cash values and policy loans or any other right to withdraw funds held in conjunction with policies or contracts. This subsection (6)(b)(i) also allows temporary moratoriums or liens on any contractual provisions for deferral of cash or policy loan value.

(ii) If the receivership court imposes a temporary moratorium or moratorium charge on payment of cash values or policy loans or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights for the period of the moratorium or moratorium charge imposed by the receivership court. This subsection (6)(b)(ii) does not apply to claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(7) The association is not liable under this part for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides protection by statute or regulation for residents of this state if that protection is substantially similar to that provided by this part for residents of other states.

(8) In carrying out its duties under this section, the association may, subject to the approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed for calculating returns or changes in value. The alternative policy or contract issued under this subsection (8):

(a) must provide in lieu of the index or other external reference in the original policy or contract:

(i) a fixed interest rate;

(ii) payment of dividends within minimum guarantees; or

(iii) a different method for calculating interest or changes in value;

(b) may not contain a requirement for evidence of insurability, a waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

(c) must be substantially similar to the replaced policy or contract in all other material terms.

~~(1)~~*(9)* In addition to other rights provided by law, the association may:

(a) enter into contracts that are necessary or proper to carry out the provisions and purposes of this part;

(b) sue or be sued, including taking any legal actions necessary or proper ~~for recovery~~ *to recover* ~~of~~ any unpaid assessments ~~under 33-10-228~~ and to settle claims or potential claims against it;

(c) borrow money to effect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default must be legal investments for domestic insurers and may be carried as admitted assets.

(d) employ or retain persons who are necessary to handle the financial transactions of the association and to perform other functions that become necessary or proper under this part;

(e) negotiate and contract with any liquidator, rehabilitator, supervisor, or ancillary receiver to carry out the powers and duties of the association;

(f) take legal action that may be necessary *or appropriate* to avoid *or recover* payment of improper claims;

(g) exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but the association may not ~~in any case~~ issue insurance policies or annuity contracts other than those issued to perform ~~the contractual~~ *its* obligations ~~of the impaired or insolvent insurer~~ *under this part*;

(h) organize itself as a corporation or in any other legal form permitted by the laws of the state;

~~(h)~~*(i)* request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this part with respect to the person. The person shall promptly comply with the request.

~~(i)~~*(j)* take other necessary or appropriate action to discharge its duties and obligations under this part or to exercise its powers under this part.

~~(2)~~*(10)* The association may render assistance and advice to the commissioner, upon request, concerning rehabilitation, liquidation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

~~(3)~~*(11)* The association has standing to appear or intervene before any court *or agency* in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this part or before any court with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. The association's standing extends to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring, modifying, or guaranteeing the covered policies *or contracts* of the impaired or insolvent insurer and the determination of the covered policies ~~and contractual obligations~~ *or contracts*. The association ~~shall~~ also ~~have~~ *has* the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or before a court with jurisdiction over any person or property against ~~whom~~ *which* the association may have rights through subrogation or otherwise.

(12) The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

~~(4)~~*(13)* The board of directors of the association may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this part in an economical and efficient manner.

~~(5)~~*(14)* When the association has arranged or offered to provide the benefits of this part to a covered person under a plan or arrangement that fulfills the association's obligations under this part, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

~~(6)~~*(15)* Venue in a suit against the association arising under this part is in the first judicial district *of this state*. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this part.

(16) The protection provided by this part does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer that is other than this state."

Section 4. Section 33-10-210, MCA, is amended to read:

"33-10-210. Unfair trade practice — notice to policyowners. (1) It is a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) The association shall prepare a summary document, complying with subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, ~~an~~ *a member* insurer may not deliver a policy or contract described in ~~33-10-201(4)~~ *33-10-224(2)(a)* to a policyowner or contract owner unless the document is delivered to the policyowner or contract owner prior to or at the time of delivery of the policy or contract~~, unless subsection (4) of this section applies~~. The document must be available upon request by a policyowner. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the contract or the owner of the policy or contract would be covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this part may require. Failure to receive this document does not give the policyowner, contract owner, certificate holder, or insured any greater rights than those stated in this part.

(3) The document prepared under subsection (2) must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer must:

(a) state the name and address of the life and health insurance guaranty association and insurance department;

(b) prominently warn the policyowner or contract owner that the life and health insurance guaranty association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(c) state that the insurer and its insurance producers are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) emphasize that the policyowner or contract owner should not rely on coverage under the life and health insurance guaranty association when selecting an insurer;

(e) provide other information as directed by the commissioner.

(4) An insurer or *an* insurance producer may not deliver a policy or contract described in ~~33-10-201(4)~~ *33-10-224(2)(a)* and excluded under ~~33-10-201(10)~~ *33-10-224(2)(b)* from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the policyowner or contract owner a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.

(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4)."

Section 5. Section 33-10-216, MCA, is amended to read:

"33-10-216. Plan of operation — delegation of powers provision. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments ~~thereto~~ *to the plan that are* necessary or suitable to ~~assure~~ *ensure* the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments ~~thereto shall~~ *to the plan* become effective upon *the commissioner's written* approval ~~in writing by the commissioner~~ *or 60 days after receipt by the commissioner's office if the commissioner does not disapprove the submitted plan of operation and any amendments within those 60 days*.

(b) If the association fails to submit ~~a suitable plan of operation within 180 days following July 1, 1974, or if at any time thereafter the association fails to submit~~ suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate ~~such~~ reasonable rules ~~as are~~ necessary or advisable to effectuate the provisions of this part. ~~Such~~ *The* rules ~~shall continue~~ *remain* in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation ~~shall~~ *must*, in addition to requirements enumerated elsewhere in this part:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under 33-10-204;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for *keeping* records ~~to be kept~~ of all financial transactions of the association, its ~~insurance producers~~ *agents*, and the board of directors;

(e) establish ~~the~~ procedures ~~whereby selections for~~ *to select* the board of directors ~~will be made~~ and ~~submitted~~ *submit notice of the selections* to the commissioner;

(f) establish any additional procedures for assessments under 33-10-227;

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under ~~33-10-205(1)(c)~~ *33-10-205(9)(c)* and 33-10-227, ~~are~~ *may be* delegated to a corporation, association, or other organization ~~which~~ *that* performs or will perform functions similar to those of this association or its equivalent in two or more states. ~~Such a~~ *A* corporation, association, or organization ~~shall~~ *to which these powers and duties are delegated must* be reimbursed for any payments made on behalf of the association and ~~shall~~ *must* be paid for ~~its performance of~~ *performing* any function of the association. A delegation *of authority* under this subsection ~~shall~~ *may* take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization ~~which~~ *that* extends protection not substantially less favorable ~~and~~ *or less* effective than that provided by this part."

Section 6. Section 33-10-217, MCA, is amended to read:

"33-10-217. Prevention of insolvencies or impairments. (1) To aid in the detection and prevention of insurer insolvencies or impairments, the commissioner shall:

(a) (i) notify the commissioners of all the other states~~, the territories of the United States, and the District of Columbia~~ when the commissioner takes any of the following actions against a member insurer:

(A) the revocation of a license;

(B) the suspension of a license; or

(C) the issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyowners or creditors;

(ii) mail the notice to all commissioners within 30 days following the action taken or the date on which the action occurs;

(b) report to the board of directors when the commissioner has taken any of the actions set forth in subsection (1)(a) or has received a report from any other commissioner indicating that an action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.

(c) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer; and

(d) furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners. The board of directors may use the information contained in the ratios and listings in carrying out its duties and responsibilities under this section. The report and the information contained in the ratios and listings must be kept confidential by the board of directors until ~~the time it is made public by~~ the commissioner or other lawful authority *makes the report or information public*.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(3) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(4) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations.

(5) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer or germane to the solvency of any company seeking to provide life or health insurance in this state. The reports and recommendations are not considered public documents.

(6) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments or insolvencies.

~~(7) The board of directors shall, at the conclusion of any insurer impairment or insolvency in which the association carried out its duties under this part or~~

~~exercised any of its powers under this part, prepare a report on the history and causes of the impairment or insolvency, based on the information available to the association, and submit the report to the commissioner. The board of directors shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of impairment or insolvency of a particular insurer and may adopt by reference any report prepared by other associations.~~"

Section 7. Section 33-10-222, MCA, is amended to read:

"33-10-222. Stay of proceedings — reopening default judgments. (1) All proceedings in which the ~~impaired or~~ insolvent insurer is a party in any court in this state must be stayed ~~60~~ *180* days from the date an order of liquidation, rehabilitation, or supervision is final to permit proper legal action by the association on any matters germane to its powers or duties.

(2) As to a judgment under any decision, order, verdict, or finding based on default, the association may apply to have the judgment set aside by the same court that made the judgment and must be permitted to defend against the suit on the merits."

Section 8. Section 33-10-223, MCA, is amended to read:

"33-10-223. Assignment by beneficiaries — subrogation. (1) Any person receiving benefits under this part must be considered to have assigned the person's rights under the covered policy or contract, pertaining to any causes of action against the person for losses resulting from or otherwise relating to the covered policy or contract, to the association to the extent of the benefits received because of this part whether the benefits are payments of contractual obligations or continuation of coverage or provision of substitute or alternative coverage. The association may require an assignment to it of the rights by any payee, policyowner or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this part upon the person. The association must be subrogated to these rights against the assets of any impaired *or insolvent* insurer.

(2) The subrogation rights of the association under this section have the same priority against the assets of the impaired *or insolvent* insurer as that possessed by the person entitled to receive benefits under this part.

(3) In addition to the rights detailed in this section, the association has all common-law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this part, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity *or payment for the annuity*, except for any person responsible solely by reason of serving as an assignee with respect to a qualified assignment under section 130 of the Internal Revenue Code.

(4) If subsections (1) through (3) are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations must be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policy or a portion of the policy covered by the association.

(5) If the association has provided benefits with respect to a covered obligation and a person recovers any amount to which the association has rights

as described in this section, the person shall pay to the association the portion of the recovery attributable to the policy or a portion of the policy covered by the association."

Section 9. Section 33-10-224, MCA, is amended to read:

"33-10-224. ~~Extent~~ *Coverage, limitations, and extent* of liability. *(1) (a) This part establishes coverage for the policies and contracts specified in subsection (2) to persons who, except as provided in subsections (1)(b) through (1)(e), are:*

(i) beneficiaries, assignees, or payees of the persons covered under subsection (1)(a)(ii) regardless of where the beneficiaries, assignees, or payees reside, except for nonresident certificate holders under group policies or contracts;

(ii) owners of or certificate holders under the policies and contracts specified in subsection (2), other than unallocated annuity contracts and structured settlement annuities that are provided for in subsections (1)(b) and (1)(c), if the persons are:

(A) residents; or

(B) nonresidents, but only under all of the following conditions:

(I) the insurer that issued the policies is domiciled in this state;

(II) the state in which the person resides has an association similar to the association created under this part; and

(III) the person is not eligible for coverage by an association in any other state because the insurer was not licensed in the state at the time specified in the state's guaranty association law.

(b) The provisions of subsection (1)(a) do not apply to unallocated annuity contracts specified in subsection (2). A person who is the owner of an unallocated annuity contract receives coverage under this part, except as provided in subsections (1)(d) and (1)(e), if:

(i) the contract is issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; or

(ii) the unallocated annuity contract was issued to or in connection with a government lottery if the owner is a resident.

(c) The provisions of subsection (1)(a) do not apply to structured settlement annuities specified in subsection (2). A person who is a payee under a structured settlement annuity or the beneficiary of a payee if the payee is deceased receives coverage under this part, except as provided in subsections (1)(d) and (1)(e), if the payee:

(i) is a resident, regardless of where the contract owner resides; or

(ii) is not a resident and one of the following conditions applies:

(A) The contract owner of the structured settlement annuity is a resident and is not eligible for coverage by another state's association, and the payee or beneficiary is not eligible for coverage by the association of the state in which the payee or beneficiary resides.

(B) The contract owner of the structured settlement annuity is not a resident, the insurer that issued the structured settlement annuity is domiciled in this state, the state in which the contract owner resides has an association similar to the association created by this part, and the payee, beneficiary, and contract owner are not eligible for coverage by the association in the state in which the payee, beneficiary, or contract owner resides.

(d) This part does not provide coverage to:

(i) a person who is a payee or a beneficiary of a contract owner that is a resident of this state if the payee or beneficiary is afforded any coverage by the association of another state; or

(ii) a person covered under subsection (1)(b) if any coverage is provided by the association of another state to the person.

(e) This part is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, a person may not receive coverage under this part if the person who would otherwise receive coverage under this part receives coverage under the laws of any other state. To determine the application of this subsection (1)(e) to a situation in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this part must be construed in conjunction with other state laws to result in coverage by only one association.

(2) (a) (i) Except as otherwise provided in this part, this part provides coverage to the persons specified in subsection (1) for:

(A) direct, nongroup life and health policies, direct, nongroup annuity contracts, and supplemental contracts to any of these;

(B) certificates under direct group policies and contracts and supplemental contracts to any of these; and

(C) unallocated annuity contracts issued by member insurers.

(ii) Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued in connection with government lotteries, and any immediate or deferred annuity contracts.

(b) This part does not provide coverage for:

(i) a portion of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract owner;

(ii) a policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) a portion of a policy or contract to the extent that the rate of interest on which the portion is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) when averaged over the period of 4 years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this part exceeds the rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average that is averaged for that same period or for a lesser period if the policy or contract was issued less than 4 years before the member insurer became an impaired or insolvent insurer under this part; and

(B) when the returns or changes in value exceed the rate of interest determined by subtracting 3 percentage points from the Moody's corporate bond yield average most recently available on or after the date on which the member insurer becomes an impaired or insolvent insurer under this part.

(iv) a portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under:

(A) a multiple employer welfare arrangement as defined in 29 U.S.C. 1002;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(v) a portion of a policy or contract to the extent that it contains provisions for dividends, experience rating credits, or voting rights or for payment of any fees or allowances to any person, including the policyowner or contract owner, in connection with the service to or administration of the policy or contract;

(vi) a policy or contract issued in this state by a member insurer at any time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) any unallocated annuity contract issued to or in connection with a benefit plan that is protected under the federal pension benefit guaranty corporation, regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;

(viii) a portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons' benefit plan or a government lottery;

(ix) a portion of a policy or contract to the extent that federal or state law preempts or otherwise does not permit the assessments required by 33-10-227 with respect to the policy or contract;

(x) an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policyowner, including without limitation:

(A) claims based on marketing materials;

(B) claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable requirements for filing policy forms or for policy approval;

(C) misrepresentation of or regarding policy benefits;

(D) extracontractual claims; or

(E) a claim for penalties or consequential or incidental damages;

(xi) a contractual agreement that establishes the member insurer's obligation to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case may not be an affiliate of the member insurer;

(xii) a portion of a policy or contract to the extent that it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policyowner's or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under this part. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this section, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of the impairment or insolvency of the member insurer, and the interest or changes in value are not subject to forfeiture.

(xiii) a policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to 42 U.S.C. 1395w-21 through 1395w-152, commonly known as medicare parts C and D, or any regulations issued pursuant to medicare parts C and D.

~~(1)~~*(3)* The benefits for which the association may become liable may not exceed the lesser of:

(a) the contractual obligations ~~of the impaired or insolvent insurer~~ for which the insurer ~~becomes~~ *is liable* or would have become liable if it were not an impaired or insolvent insurer; or

(b) (i) ~~except as provided in subsection (2),~~ with respect to any one life, regardless of the number of policies or contracts:

(A) $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(B) in health insurance benefits:

(I) $500,000 for basic hospital, medical, and surgical insurance or major medical insurance as defined in the covered policy or contract;

(II) $300,000 for disability *income* insurance ~~as defined in the covered policy or contract~~;

(III) $300,000 for long-term care insurance;

~~(III)~~*(IV)* $100,000, including any net cash surrender and net cash withdrawal values, for coverages not included in ~~(1)(b)(i)(B)(I) and (1)(b)(i)(B)(II)~~ *subsections (3)(b)(i)(B)(I) through (3)(b)(i)(B)(III)*;

(C) ~~$100,000~~ *$250,000* in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(ii) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the beneficiaries of each individual, if deceased, in the aggregate, ~~$100,000~~ *$250,000* in present value annuity benefits, including net cash surrender and net cash withdrawal values;

~~(iii) with respect to any one contract owner covered by any unallocated annuity contract not included in subsection (1)(b)(ii), $5 million in benefits, irrespective of the number of contracts held by that contract owner;~~

~~(iv)~~*(iii)* with respect to each payee of a structured settlement annuity or beneficiary of the payee if the payee is deceased, ~~$100,000~~ *$250,000* in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

~~(v)~~*(iv)* with respect to either one contract owner provided coverage under ~~33-10-201(6)~~ *subsection (1)(b)* or one plan sponsor whose ~~plans own~~ *plan owns* directly or in trust one or more unallocated annuity contracts not included in subsection ~~(1)(b)(ii)~~ *(3)(b)(ii)*, $5 million in benefits, irrespective of the number of contracts held by the contract owner or plan sponsor. If one or more unallocated annuity contracts are covered contracts under this part and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage must be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state~~, and in any~~. *In no* event~~,~~ *is* the association ~~is not~~ obligated to cover more than $5 million in benefits with respect to all these unallocated contracts.

~~(2)~~*(4)* ~~The~~ *In no event is the* association ~~is not~~ obligated to cover more than:

(a) an aggregate of $300,000 in benefits with respect to any one life under subsections ~~(1)(b)(i), (1)(b)(ii), and (1)(b)(iii)~~ *(3)(b)(i) through (3)(b)(iii)*, except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under subsection ~~(1)(b)(i)~~ *(3)(b)(i)*, in which case the aggregate liability of the association may not exceed $500,000 with respect to any one individual; and

(b) with respect to one owner of multiple nongroup policies of life insurance, whether the policyowner is an individual, firm, corporation, or other person and whether the persons insured are officers, managers, employees, or other persons, $5 million in benefits, regardless of the number of policies and contracts held by the owner.

~~(3)~~*(5)* The limitations set forth in this section are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this part may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

~~(4)~~*(6)* In performing its obligations to provide coverage under this part, the association is not required to guarantee, assume, reinsure, or perform or cause to be guaranteed, assumed, reinsured, or performed the contractual obligations of the impaired or insolvent insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract."

Section 10. Section 33-10-225, MCA, is amended to read:

"33-10-225. Association as creditor — use of assets. (1) For the purpose of carrying out its obligations under this part, the association ~~shall be deemed to be~~ *is* a creditor of the impaired *or insolvent* insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to 33-10-223.

(2) All assets of the impaired *or insolvent* insurer attributable to covered policies ~~shall~~ *must* be used to continue all covered policies and pay all contractual obligations of the impaired *or insolvent* insurer as required by this part. Assets attributable to covered policies, as used in this section, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired *or insolvent* insurer.

(3) As a creditor of the impaired or insolvent insurer, as established in this part and consistent with 33-2-1363, the association and other similar associations are entitled to receive a disbursement of assets out of the marshalled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this part. If, within 120 days of the receivership court issuing a final determination of insolvency of an insurer, the liquidator has not made an application to the court for the approval of a proposal to disburse assets out of marshalled assets to guaranty associations having obligations because of the insolvency, then the association may make application to the receivership court for approval of its own proposal to disburse those assets."

Section 11. Section 33-10-226, MCA, is amended to read:

"33-10-226. Distribution of ownership rights — distribution to shareholders. (1) Prior to the termination of any liquidation, rehabilitation, or supervision proceeding, the court may take into consideration the contributions

of the respective parties, including the association, the shareholders, and policyowners of the impaired or insolvent insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the impaired or insolvent insurer. In the determination, consideration must be given to the welfare of the policyowners of the continuing or successor insurer.

(2) A distribution to stockholders, if any, of an impaired or insolvent insurer may not be made until and unless the *association has fully recovered the* total amount of ~~assessments levied by the association with respect to the insurer have been fully recovered by the association~~ *valid claims of the association, with interest, for funds expended in carrying out its powers and duties under this part*."

Section 12. Section 33-10-227, MCA, is amended to read:

"33-10-227. Assessments — abatement — basis for ratesetting. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at the times and for the amounts as the board finds necessary. ~~The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.~~

(2) Assessments are due not less than 30 days after prior written notice to the member insurers. An unpaid assessment accrues interest at 10% a year on and after the due date. The association may also impose any charges on a late-paid assessment if the plan of operation provides for late-paid assessments.

~~(2)~~*(3)* There are two classes of assessments~~, as follows~~:

(a) Class A assessments must be ~~made~~ *authorized and called* for the purpose of meeting administrative *and legal* costs and other ~~general~~ expenses. *Class A assessments may be authorized and called whether or* not related to a particular impaired or insolvent insurer.

(b) Class B assessments must be ~~made~~ *authorized and called* to the extent necessary to carry out the powers and duties of the association under ~~33-10-219 and 33-10-220~~ *33-10-205* with regard to an impaired or insolvent insurer.

~~(3)~~*(4)* (a) The amount of any Class A assessment for each account must be determined by the board *and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that the amount be credited against future Class B assessments. The total of all non-pro rata assessments may not exceed $300 for each member insurer in any 1 calendar year*. The amount of any Class B assessment must be ~~divided~~ *allocated for assessment purposes* among the accounts ~~in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account bear to the premiums received by the insurer on all covered policies~~ *pursuant to an allocation formula that may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board in its sole discretion as being fair and reasonable under the circumstances*.

(b) Class B assessments against member insurers for each account *and subaccount* must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies *or contracts* covered by each account *or subaccount* bear to the premiums received on business in this state by all assessed member insurers. *This ratio must be calculated from information that is available for the 3 most recent calendar years preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the 3 most recent calendar years for which*

information is available preceding the year in which the insurer became impaired.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be ~~made~~ *authorized and called* until necessary to implement the purposes of this part. Classification of assessments under subsection ~~(2)~~ *(3)* and computation of assessments under this subsection *(4)* must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. *The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the assessment is authorized.*

~~(4)~~*(5)* The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. ~~The total of all assessments upon a member insurer for each account may not in any 1 calendar year exceed 2% of the insurer's premiums in this state on the policies covered by the account.~~

~~(5)~~ In the event an assessment against a member insurer is abated or deferred, in whole or in part, ~~because of the limitations set forth in subsection (4),~~ the amount by which the assessment is abated or deferred ~~must~~ *may* be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. ~~If the maximum assessment, together with the other assets of the association in either account, does not provide in any 1 year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon after that year as permitted by this part.~~ *Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.*

(6) (a) (i) Subject to the provisions of subsection (6)(a)(ii), the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account may not in 1 calendar year exceed 2% of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the 3 calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(ii) If two or more assessments are authorized in 1 calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subsection (6)(a)(i) must be equal and limited to the higher of the 3-year average annual premiums for the applicable account or subaccount as calculated pursuant to this section.

(iii) If the maximum assessment, together with the other assets of the association in an account, does not provide in 1 year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon as permitted by this part.

(b) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, for use when the board determines that the maximum assessment is insufficient to cover anticipated claims.

~~(6)~~*(c)* If ~~a 1%~~ *the maximum* assessment for ~~any~~ *a* subaccount of the life insurance ~~account~~ and ~~the~~ annuity account in ~~any~~ 1 year does not provide an

amount sufficient to carry out the responsibilities of the association, then pursuant to subsection ~~(3)(b)~~ *(4)(b)*, the board shall assess ~~all~~ *the other* subaccounts of the life insurance ~~account~~ and ~~the~~ annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection ~~(4)~~ *(6)(a)*.

(7) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that ~~amount~~ *account*, including assets accruing from *assignment, subrogation, and* net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses ~~if refunds are impractical~~.

(8) It is proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(9) The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in that form and for the amount, if any, and period of time that the commissioner may approve.

(10)(a) A member insurer that wishes to protest all or a part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment must be available to meet association obligations during the pendency of the protest or any subsequent appeal. A written statement must accompany the payment and must indicate that the payment is made under protest and include a brief description of the grounds for the protest.

(b) Within 60 days after the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issue raised by the protest.

(c) Within 30 days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.

(d) Instead of rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal of the assessment is upheld, the amount paid in error or excess must be returned to the member insurer. Interest on a refund due to a protesting member insurer must be paid at the rate actually earned by the association.

(11) The association may request information of member insurers to aid in the exercise of its powers and duties under this section. Member insurers shall promptly comply with a request from the association."

Section 13. Repealer. The following sections of the Montana Code Annotated are repealed:

33-10-219. Impaired insurer — association's powers.

33-10-220. Insolvent insurer — association's powers.

33-10-228. Suspension for failure to pay — forfeiture — appeal from board actions.

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date — applicability. [This act] is effective on passage and approval and applies to proceedings in which a member insurer is placed under an order of liquidation with a finding of insolvency on or after [the effective date of this act].

Approved March 18, 2011

CHAPTER NO. 28

[HB 17]

AN ACT RELATING TO THE RELATIONSHIP OF STATE AGENCY LIQUOR STORES WITH OTHER LIQUOR LICENSEES; CORRECTING TERMINOLOGY DESCRIBING STATE AGENCY LIQUOR STORES; AMENDING SECTION 16-2-203, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2-203, MCA, is amended to read:

"16-2-203. ~~Department sales~~ *Sales* to licensees. ~~The department may sell through its stores~~ *Agency liquor stores may sell* to licensees licensed under this code all kinds of liquor and table wine at the posted price ~~thereof in the store in which the liquor and table wine are sold~~. All sales ~~shall~~ *must* be ~~upon~~ *made on* a cash basis."

Section 2. Applicability. [This act] applies to sales made by agency liquor stores under [section 1] after September 30, 2011.

Approved March 23, 2011

CHAPTER NO. 29

[HB 24]

AN ACT GENERALLY REVISING WATER LAWS RELATED TO AQUIFER RECHARGE AND MITIGATION; PROVIDING UP TO 20 YEARS TO COMPLETE A CHANGE OF USE FOR AQUIFER RECHARGE OR MITIGATION OR MARKETING FOR AQUIFER RECHARGE OR MITIGATION; AND AMENDING SECTIONS 85-2-102, 85-2-310, AND 85-2-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Change in appropriation right for aquifer recharge or mitigation — marketing. (1) Subject to 85-2-402 and this section, an appropriator may apply for a change in appropriation right for the purpose of aquifer recharge or mitigation or for the purpose of marketing water for aquifer recharge or mitigation.

(2) During the completion period authorized by the department for a change pursuant to this section, the appropriator may continue to use the appropriation right for any authorized beneficial use provided that proportionate amounts of the appropriation right are retired as the mitigation or aquifer recharge beneficial use is perfected.

(3) (a) If the full amount of the appropriation right is not sold or marketed as mitigation or aquifer recharge prior to the completion date, the water right retains the beneficial uses authorized prior to the change approved pursuant to this section.

(b) For an appropriation right that retains the original beneficial uses pursuant to this section, the flow rate and volume of water allowed at the point of diversion must be equal to the flow rate and volume allowed under the initial beneficial uses minus the amount that was sold or marketed for mitigation or aquifer recharge.

(4) As part of a change in appropriation right approved pursuant to this section, the department shall:

(a) determine a period for the change in appropriation right to be completed that does not exceed 20 years; and

(b) require the appropriator to notify the department within 30 days each time a portion of the change is completed.

Section 2. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation ~~as provided in 85-2-360 and 85-2-362~~; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground

surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(4) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation ~~as provided in 85-2-360 and 85-2-362~~; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(5) "Certificate" means a certificate of water right issued by the department.

(6) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(7) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(8) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(9) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(10) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(11) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(12) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(13) "Ground water" means any water that is beneath the ground surface.

(14) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(17) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(18) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(19) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(20) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(21) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(22) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(23) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(24) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(25) "Water division" means a drainage basin as defined in 3-7-102.

(26) "Water judge" means a judge as provided for in Title 3, chapter 7.

(27) "Water master" means a master as provided for in Title 3, chapter 7.

(28) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(29) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 3. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application for permit or change in appropriation right. (1) (a) If the department proposes to deny an application for a permit or a change in appropriation right under 85-2-307, unless the applicant withdraws the application, the department shall hold a hearing pursuant to 2-4-604 after serving notice of the hearing by first-class mail upon the applicant for the applicant to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be denied.

(b) (i) Upon request from the applicant, the department shall appoint a hearing examiner who did not participate in the preliminary determination.

(ii) The applicant may make only one request pursuant to this subsection (1)(b) for a different hearing examiner.

(2) A proposal to grant an application with or without conditions following a hearing on a proposal to deny the application must proceed as if the department proposed to grant the application in its preliminary determination pursuant to 85-2-307.

(3) If valid objections are not received on an application or if valid objections are unconditionally withdrawn and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 85-2-307.

(4) If valid objections to an application are received and withdrawn with conditions stipulated with the applicant and the department preliminarily determined to grant the permit or change in appropriation right, the department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.

(5) The department shall deny or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 within 90 days after the administrative record is closed.

(6) If an application is to appropriate water with a point of diversion, conveyance, or place of use on national forest system lands, any application approved by the department is subject to any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of the water applied for and any terms, conditions, and limitations related to the use of water contained in any special use authorization required by federal law.

(7) Except as provided in subsection (6), an application may not be denied or approved in a modified form or upon terms, conditions, or limitations specified by the department unless the applicant is first granted an opportunity to be heard. If an objection is not filed against the application but the department is of the opinion that the application should be denied or approved in a modified form or upon terms, conditions, or limitations specified by it, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied unless a hearing is requested.

(8) The department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

(9) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (9)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) *except as provided in subsection (10),* if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by 85-2-124.

(10) If water applied for is to be marketed by the applicant to other users for the purpose of aquifer recharge or mitigation, the applicant is exempt from the provisions of subsection (9)(c)(v). The applicant must provide information detailing the proposed place of use."

Section 4. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights — definition. (1) (a) The right to make a change in appropriation right subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change in appropriation right proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(b) If an application involves a change in a point of diversion, conveyance, or place of use located on national forest system lands, the application is not correct and complete until the applicant has submitted proof to the department of any written special use authorization required by federal law for the proposed change in occupancy, use, or traverse of national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.

(c) As used in this part, "national forest system lands" has the same meaning as that provided in 85-20-1401, Article I.

(2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

~~(b) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the proposed means of diversion, construction, and operation of the appropriation works are adequate.~~

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to [section 1] for mitigation or marketing for mitigation.

(c) The proposed use of water is a beneficial use.

~~(d) Except for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408 or a change in appropriation right to instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water.~~

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to:

(i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436;

(ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or

(iii) a change in appropriation right pursuant to [section 1] for mitigation or marketing for mitigation.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change in appropriation right is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate

conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in appropriation right in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change in appropriation right. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change in appropriation right might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change in appropriation right. The department may extend time limits specified in the change in appropriation right approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified

statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change in appropriation right approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change in appropriation right approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change in appropriation right approval.

(11) The original of a change in appropriation right approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change in appropriation right approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change in appropriation right pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the rule establishing the controlled ground water area do not restrict a change in appropriation right;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) (A) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(B) If the replacement well is located on national forest system lands, the notice is not correct and complete under this subsection (15) until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the replacement well.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion. If the redundant water supply well is located on national forest system lands, the notice is not correct and complete under this subsection until the appropriator has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of constructing the redundant water supply well.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this subsection (16).

(17) The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows pursuant to 85-2-320 and this section and to benefit the fishery resource pursuant to 85-2-436 and this section.

(18) (a) An appropriator may change an appropriation right for a replacement point of diversion without the prior approval of the department if:

(i) the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;

(ii) there are no other changes to the water right;

(iii) the capacity of the diversion is not increased;

(iv) there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(v) the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;

(vi) the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;

(vii) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion;

(viii) the appropriator can show the change will not increase access to water availability, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed; and

(ix) a timely, correct and complete notice of replacement point of diversion is submitted to the department as provided in subsection (18)(b).

(b) (i) Within 60 days after completion of a replacement point of diversion, the appropriator shall file a notice of replacement point of diversion with the department on a form provided by the department.

(ii) The department shall review the notice of replacement point of diversion and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (18)(a) have been met and the notice is correct and complete. The department may inspect the diversion to confirm that the criteria under subsection (18)(a) have been met. If the department issues an authorization of a change in an appropriation right for a replacement point of diversion, the department shall prepare a notice of the authorization and provide notice of the authorization in the same manner as required in 85-2-307 for applications.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement point of diversion has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement point of diversion within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement point of diversion is not filed and completed within the time allowed or if the department determines the criteria under subsection (18)(a) have not been met, the appropriator shall:

(A) cease appropriation of water from the replacement point of diversion pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (18) do not apply to an appropriation right abandoned under 85-2-404.

(d) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (18)(a).

(e) (i) An appropriator may file a correct and complete objection with the department alleging that the change in appropriation right for a replacement point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.

(ii) If the department determines after a contested case hearing between the appropriator and the objector that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations necessary to protect the rights of other appropriators.

(iii) The burden of proof to prove lack of adverse effect at the hearing is on the appropriator changing the point of diversion."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 1].

Approved March 23, 2011

CHAPTER NO. 30

[HB 65]

AN ACT CHANGING THE ENTITY RESPONSIBLE FOR PAYING THE EXPENSES OF AN INTERPRETER FOR A DEAF INDIVIDUAL IN A CRIMINAL PROCEEDING IN A DISTRICT COURT FROM THE COUNTY GENERAL FUND TO THE OFFICE OF COURT ADMINISTRATOR; AND AMENDING SECTION 49-4-509, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-509, MCA, is amended to read:

"49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for the interpreter's services, together with actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding *in a district court*, the fee must be paid ~~out of the county general fund~~ *by the office of court administrator in accordance with judicial branch policy*, and when the interpreter is otherwise appointed, the fees must be paid out of funds available to the appointing authority."

Approved March 23, 2011

CHAPTER NO. 31

[HB 96]

AN ACT ALLOWING THE OFFICE OF STATE PUBLIC DEFENDER TO RECOVER ITS COSTS OF REPRESENTATION FROM A RESPONDENT IN CERTAIN CASES; AND AMENDING SECTION 47-1-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 47-1-110, MCA, is amended to read:

"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) ~~Beginning July 1, 2006, money~~ *Money* to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant *to* the Montana Youth Court Act; ~~and~~

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104*; and*

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111."

Approved March 23, 2011

CHAPTER NO. 32

[HB 114]

AN ACT AMENDING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COVERAGE FOR MENTAL HEALTH COUNSELING EXPENSES FOR MINOR CHILDREN PRESENT IN HOMES WHERE DOMESTIC VIOLENCE HAS OCCURRED; AND AMENDING SECTIONS 53-9-103, 53-9-123, AND 53-9-128, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-9-103, MCA, is amended to read:

"53-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part that the claimant has received or that is readily available to the claimant from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state; or

(i) any other third party.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state;

(b) results in bodily injury or death *or involves domestic violence in a home where minor children were present*; and

(c) is punishable by fine, imprisonment, or death or would be so punishable except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in 61-8-401; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Office" means the office of victims services established in 2-15-2016.

(6) "Victim" means*:*

(a) a person who suffers bodily injury or death as a result of:

~~(a)~~*(i)* criminally injurious conduct;

~~(b)~~*(ii)* the person's good faith effort to prevent criminally injurious conduct; or

~~(c)~~*(iii)* the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct*; or*

(b) a minor child present in a home where domestic violence occurred."

Section 2. Section 53-9-123, MCA, is amended to read:

"53-9-123. Evidence of condition. (1) The office may require the claimant to supplement the application with any reasonably available medical *or counseling* reports relating to the injury for which compensation is claimed.

(2) If the physical condition of a victim or claimant is material to a claim, the office may order the victim or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a deceased victim. The office shall pay for the examination or autopsy. The order must specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and must require the person to file with the office a detailed written report of the examination or autopsy. The report must set out physician's findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the office shall furnish the person a copy of the report. If the victim is deceased, the office, on request, shall furnish the claimant a copy of the report.

(3) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical condition of the claimant or victim in a proceeding under this part in which that condition is an element."

Section 3. Section 53-9-128, MCA, is amended to read:

"53-9-128. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and other treatment approved by the office for the injuries suffered due to criminally injurious conduct. Unless expressly requested by the claimant, benefits may not be paid under this subsection until the claimant has been fully compensated for total wage loss benefits as provided in subsection (1) or (7).

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and other dependents unless the office determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must continue to be paid to the other dependents as long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding ~~$3,500~~ *$3,500*, must be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of the injury has no reasonable prospect of being regularly employed in the normal labor market and who was employable but was not employed at the time of the injury may in the discretion of the office be awarded weekly compensation benefits in an amount determined by the office not to exceed $100 per week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market. The claimant must be awarded benefits as provided in subsection (2).

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the office be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week, which is payable in the manner and for the period provided by subsection (3)(b) or for a shorter period as determined by the office. The claimant must be awarded benefits as provided in subsection (4).

(8) Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid when the victim is killed as a result of criminally injurious conduct, amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection ~~(9)(c)~~ *(9)(d)*, the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection ~~(9)(c)~~ *(9)(d)*, the parent, brother, or sister of a minor who is a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.

(c) Subject to the limitations in subsection (9)(d), minor children who were present in a home where domestic violence occurred are entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.

~~(c)~~*(d)* Total payments made under subsections (9)(a) ~~and (9)(b)~~ *through (9)(c)* may not exceed $2,000 or 12 consecutive months of treatment for each person, whichever occurs first."

Approved March 23, 2011

CHAPTER NO. 33

[HB 156]

AN ACT INCREASING THE ALLOWANCE TO BE PAID BY THE COUNTY OF RESIDENCE FOR THE INTERMENT AND THE SHIPPING AND RAISING OF A HEADSTONE FOR A VETERAN; AMENDING SECTION 10-2-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-501, MCA, is amended to read:

"10-2-501. Interment allowance for veterans — payment by county of residence — veterans' interment supervisor — definitions. (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans' interment supervisor.

(2) The veterans' interment supervisor shall cause to be decently interred the body or cremated remains of any veteran who was a resident of the state of Montana at the time of death. In performing this duty, the veterans' interment supervisor shall ensure that the desires of the veteran's personal representative or heirs are not violated. The veterans' interment supervisor may not receive any compensation for duties performed in compliance with this part.

(3) The interment may not be made in a burial ground or cemetery or in a portion of a burial ground or cemetery used exclusively for the interment of pauper dead.

(4) A sum not to exceed ~~$250~~ *$500* to defer interment expenses must be paid by the veteran's county of residence.

(5) The interment benefits are not available in the case of a veteran whose personal representative or heirs waive the benefits.

(6) Whenever interment is of a resident of a Montana veterans' home, a sum not to exceed ~~$250~~ *$500* to defer interment expenses must be paid by the veteran's county of residence.

(7) If a veteran dies while temporarily absent from the state or county of residence, the provisions of this section apply and the interment expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

(8) When a veteran dies at an institution of the state of Montana, other than a Montana veterans' home, at a federal institution, or at a private facility and interment for any cause is not made in the veteran's county of residence, the officers of the institution or facility shall provide the proper interment prescribed in this section. The reimbursement for the expense of each interment may not exceed ~~$250~~ *$500*. The expense must be paid by the veteran's county of residence.

(9) An interment may not be covered by any special or standing contract under which the cost of interment is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans' interment supervisor shall, upon request of the deceased veteran's personal representative or heirs, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran's grave. The reimbursement costs for the shipping and raising of the headstone may not exceed an amount equal to the actual cost paid, up to ~~$70~~ *$100*, and must be paid by the veteran's county of residence at the time of death. The expense must be audited and paid as provided in this section for interment expenses.

(11) As used in this part, the following definitions apply:

(a) "Interment" has the meaning provided in 37-19-101.

(b) "Residence" is determined as provided in 13-1-112. If the intent of the veteran regarding residence cannot be determined under 13-1-112, the costs of interment must be paid by the veteran's county of residence at the time of admittance into a Montana veterans' home, a state or federal institution, or a private facility."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2011

CHAPTER NO. 34

[HB 210]

AN ACT ALLOWING FOR THE ISSUANCE OF A TERM PERMIT FOR AN OVERLENGTH OR OVERWIDTH VEHICLE MOVING A MOBILE HOME OR A MANUFACTURED HOME IF THE VEHICLE DOES NOT EXCEED 110 FEET IN LENGTH OR 16 FEET IN WIDTH; AND AMENDING SECTION 61-10-124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

"61-10-124. (Temporary) Special permits — fees. (1) Except as provided in subsections ~~(2)(b),~~ (2)(d)~~,~~ and (4), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), *(2)(h),* (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Except as provided in subsection (2)(g), a Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). ~~The fee for this permit is $75.~~ This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the

department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is $125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(g) A Rocky Mountain double carrying baled hay may not exceed 88 feet of combined trailer length.

(h) A term permit may be issued for an overlength vehicle moving a mobile home or a manufactured home, as defined in 15-24-201, when the vehicle does not exceed 110 feet in length or 16 feet in width.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over or tilt-cab truck tractor or a truck may not exceed an overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck tractor may not exceed an overall length of 110 feet, inclusive of the front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment. (Void on occurrence of contingency—sec. 2, Ch. 285, L. 2003.)

61-10-124. (Effective on occurrence of contingency) Special permits — fees. (1) Except as provided in subsections ~~(2)(b),~~ (2)(d)~~,~~ and (4), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), (2)(f), *(2)(g),* (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify

highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). ~~The fee for this permit is $75.~~ This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is $125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(g) A term permit may be issued for an overlength vehicle moving a mobile home or a manufactured home, as defined in 15-24-201, when the vehicle does not exceed 110 feet in length or 16 feet in width.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is

beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over or tilt-cab truck tractor or a truck may not exceed an overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck tractor may not exceed an overall length of 110 feet, inclusive of the front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-201 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(5) The department of transportation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment."

Approved March 23, 2011

CHAPTER NO. 35

[HB 263]

AN ACT ALLOWING COUNTY WATER AND SEWER DISTRICTS TO USE ONE OR ANY COMBINATION OF ASSESSMENT METHODS TO MEET BOND OBLIGATIONS AND OTHER EXPENSES; AND AMENDING SECTION 7-13-2303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2303, MCA, is amended to read:

"7-13-2303. ~~Method~~ *Methods* of assessment. (1) When the amount of money required for any purpose enumerated in 7-13-2302 has been determined, the county commissioners or board of directors may use one *or any combination* of the following methods of assessment:

(a) ~~each~~ *Each* lot or parcel of land to be assessed ~~must~~ *may* be assessed with that part of the amount of money required that its area bears to the total area of all of the lands to be assessed~~;~~.

(b) ~~the~~ *The* assessment may~~, at the option of the board or boards of county commissioners,~~ be based upon the taxable valuation as stated in the last-completed county assessment roll of the lots or parcels of land, exclusive of improvements, within the district. In that case, each lot or parcel of land to be assessed must be assessed with that part of the amount of money required that its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(c) ~~each~~ *Each* dwelling unit may be assessed a flat fee. For purposes of this subsection (1)(c), "dwelling unit" has the *same* meaning provided ~~for~~ in 70-24-103.

(2) If the district lies in more than one county, the same method of assessment must be used ~~by~~ *in* each ~~board of county commissioners~~ *county*."

Approved March 23, 2011

CHAPTER NO. 36

[HB 359]

AN ACT REVISING WORKERS' COMPENSATION LAW PERTAINING TO SETTLEMENTS AND LUMP-SUM PAYMENTS; AMENDING SECTIONS 39-71-703, 39-71-721, AND 39-71-741, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is not based exclusively on complaints of pain;

(ii) is established by objective medical findings; and

(iii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 375 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum conversions for benefits not accrued may be reduced to present value at the rate established by the department pursuant to 39-71-741~~(3)~~*(5)*.

(8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(10) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 2. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death — limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's biweekly payments as provided in 39-71-741~~(3)~~*(5)*.

(2) To beneficiaries as defined in 39-71-116(4)(a) through (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of death.

(3) To beneficiaries as defined in 39-71-116(4)(e) and (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(4)(b) through (4)(d).

(6) In all cases, benefits must be paid to beneficiaries.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702."

Section 3. Section 39-71-741, MCA, is amended to read:

"39-71-741. ~~Compromise settlements~~ *Settlements* and lump-sum payments. (1) By written agreement, *a claimant and an insurer may convert* benefits under this chapter ~~may be converted~~ in whole or in part into a lump sum. An agreement that settles a claim for any type of benefit is subject to department approval *as provided in subsection (2)*. Lump-sum advances and payment of accrued benefits in a lump sum, except permanent total disability benefits under subsection ~~(1)(c)~~ *(2)(c)*, are not subject to department approval. If

the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved.

(2) The department shall directly notify a claimant of a department order approving or disapproving a claimant's ~~compromise~~ *settlement* or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve ~~an~~ *a settlement* agreement to convert the following benefits to a lump sum only under the following conditions:

(a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;

(b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any ~~permanent partial~~ lump-sum ~~conversion~~ *payment* in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection ~~(1)(b)~~ *(2)(b)* only if the department determines that the lump-sum ~~conversion~~ *payment* amount is inadequate.

(c) permanent total disability benefits if the total of all lump-sum conversions in part that are awarded to a claimant do not exceed $20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court ~~must be~~ *is* the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(d) except as otherwise provided in this chapter, all other ~~compromise~~ settlements and lump-sum payments agreed to by a claimant and insurer; ~~or~~

(e) medical benefits on an accepted claim if an insurer disputes the insurer's continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability*; or*

(f) medical benefits on an accepted claim if the claimant has reached maximum medical improvement and the following applicable conditions are met:

(i) the insurer and claimant mutually agree to a settlement of all or a portion of medical benefits; and

(ii) a settlement is in the best interest of the parties to the settlement.

(3) The parties to a medical settlement agreement shall set out the rationale that is the basis for the settlement, and the claimant shall indicate by a signed acknowledgment an understanding of what medical benefits will terminate because of the settlement.

~~(2)~~*(4)* Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection ~~(3)(b)~~ *(5)(b)*.

~~(3)~~*(5)* (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

~~(4)~~*(6)* A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination.

(7) If an insurer and a claimant agree to a ~~compromise and release~~ settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision *without requesting mediation*.

(8) The legislature does not intend to allow settlement of undisputed medical claims under subsection (2)(f) unless all parties willingly agree to the settlement. The failure of the parties to willingly agree to a settlement does not constitute a dispute concerning benefits."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [Section 3] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled by [the effective date of this act].

Approved March 23, 2011

CHAPTER NO. 37

[SB 26]

AN ACT REQUIRING THAT A TEMPORARY ORDER OF PROTECTION CONTAIN A WARNING THAT A VIOLATION OF THE ORDER IS A CRIMINAL OFFENSE; AND AMENDING SECTION 40-15-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-15-201, MCA, is amended to read:

"40-15-201. Temporary order of protection. (1) A petitioner may seek a temporary order of protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a temporary order of protection immediately.

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:

(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;

(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or

indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;

(c) prohibiting the respondent from removing a child from the jurisdiction of the court;

(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;

(e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;

(f) prohibiting the respondent from possessing or using the firearm used in the assault;

(g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;

(h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;

(i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;

(j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.

(3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld, except by order of the court for good cause shown.

(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.

(5) A temporary order of protection issued pursuant to this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626 and may also be a criminal offense under 45-5-220.""

Approved March 23, 2011

CHAPTER NO. 38

[SB 41]

AN ACT ALLOWING A CITY TO ESTABLISH A CITY COURT OF RECORD; PROVIDING THAT APPEALS FROM A CITY COURT OF RECORD ARE ON THE RECORD AND NOT DE NOVO; AMENDING SECTIONS 3-1-102, 3-11-101, 25-33-301, AND 46-17-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, the workers' compensation court, the municipal courts, ~~and~~ the justices' courts of record*, and the city courts of record* are courts of record."

Section 2. Section 3-11-101, MCA, is amended to read:

"3-11-101. City court established — *city court of record.* *(1)* A city court is established in each city or town. A city judge shall establish regular sessions of the court. On judicial days, the court must be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

(2) A city may establish the city court as a court of record. If the city court is established as a court of record, it must be known as a "city court of record". The court's proceedings must be recorded by electronic recording or stenographic transcription, and all papers filed in a proceeding must be included in the record. A city court of record may be established by a resolution of the city commissioners or pursuant to 7-5-131 through 7-5-137."

Section 3. Powers and duties of city court of record. (1) Except as otherwise provided by Title 25, chapter 30, and this chapter, the judge in a city court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The judge may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The city court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

Section 4. Appeal to district court from city court of record — record on appeal. (1) A party may appeal to district court a judgment or order from a city court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a city court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the city court of record.

Section 5. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo — pleadings — conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court of record pursuant to 3-10-101 is on the record as provided in 3-10-115. *The appeal from a city court of record pursuant to 3-11-101 is on the record as provided in [section 4].*"

Section 6. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, ~~and~~ an appeal from a justice's court of record is governed by 3-10-115*, and an appeal from a city court of record is governed by [section 4]*.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.

(4) A defendant may appeal a justice's court, other than a justice's court of record, or city court*, other than a city court of record,* revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure.

(5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 3, chapter 11, part 1, and the provisions of Title 3, chapter 11, part 1, apply to [sections 3 and 4].

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved March 23, 2011

CHAPTER NO. 39

[SB 46]

AN ACT CLARIFYING PAYMENTS TO AGENTS RETURNING FUGITIVES IN EXTRADITION PROCEEDINGS; AND AMENDING SECTION 46-30-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-30-411, MCA, is amended to read:

"46-30-411. Expenses of bringing fugitives back to this state. (1) When the governor of this state, in the exercise of the authority conferred by Article IV, section 2, of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in that state or foreign government, the accounts of the person employed by the governor to bring back the fugitive must be audited by the governor and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may use commercial transportation, aircraft, or motor vehicle to return the fugitive. ~~The~~ *If the fugitive is returned to this state by an officer or employee of the state or of a political subdivision of the state, the* agent must be paid travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in returning the fugitive to this state. *If the governor's authorized agent contracts for the performance of the transportation with a person or entity who is not an officer or employee of the state or of a political subdivision of the state, the expenses must be paid in accordance with the rate established by the contracting parties, as approved by the office of the governor.*"

Approved March 23, 2011

CHAPTER NO. 40

[SB 51]

AN ACT ELIMINATING THE REQUIREMENT THAT LEGISLATIVE AUDITOR'S DIVISION STAFF OBSERVE LOTTERY DRAWINGS; AMENDING SECTION 23-7-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-311, MCA, is amended to read:

"23-7-311. Drawings for and payment of prizes — unclaimed prizes. (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings ~~must~~ *may* be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff ~~and a professional staff employee of the legislative auditor's office~~ prior to and after each public drawing.

(2) The commission may by rule provide for the payment of prizes by ticket or chance sales agents, whether or not the paying agent sold the winning ticket or chance, whenever the amount of the prize is less than an amount set by commission rule. Payment may not be made directly by a machine or device or by a computer terminal.

(3) (a) Except as provided in subsection (3)(b), prizes over $100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 20 years and in yearly installment payments of not less than $20,000.

(b) If the commission enters into an agreement under the provisions of 23-7-202(8) to participate in a game for prizes of over $100,000 that requires

payment periods of more than 20 years or yearly installment payments of less than $20,000 as a condition of participation, the commission may adopt the installment payment amounts and time periods necessary to comply with the conditions of the game.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2011

CHAPTER NO. 41

[SB 53]

AN ACT ALLOWING AN AGENCY TO NOTIFY AN INTERESTED PERSON, WITH THE CONSENT OF THAT PERSON, OF THE AVAILABILITY ON THE AGENCY'S WEBSITE OF AN ELECTRONIC NOTICE OF PROPOSED RULEMAKING; AMENDING SECTIONS 2-3-301 AND 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-301, MCA, is amended to read:

"2-3-301. Agency to accept public comment electronically — dissemination of electronic mail address and documents required — prohibiting fees. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

(a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;

(b) the telephone directory of state agencies published by the department of administration;

(c) any notice of agency existence, purpose, and operations published on the internet world wide web, popularly known as a "website", used by the agency; or

(d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).

(3) An agency shall, at the request of another agency or person and subject to 2-6-102, disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. *Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in 2-4-302(2)(a)(ii).* An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

(5) As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government."

Section 2. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which contact was made with the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was contacted, the filing of the proposal notice under subsection ~~(2)(a)~~ *(2)(a)(i)* is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(ii) the number of persons affected.

(2) (a) *(i)* The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. ~~Within~~ *Except as provided in subsection (2)(a)(ii), within* 3 days of publication, a copy of the published proposal notice must be sent to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b).

(ii) In lieu of sending a copy of the published proposal notice to an interested person who has requested the notice, the agency may, with the consent of that person, send that person an electronic notification that the proposal notice is available on the agency's website and an electronic link to the part of the agency's website or a description of the means of locating that part of the agency's website where the notice is available.

(iii) Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed

of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The proposal notice required by subsection (1) must be published at least 30 days in advance of the agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other electronic communications system available to the public.

(d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice for a rule that initially implements legislation, the agency shall contact, as provided in subsection (8), the legislator who was the primary sponsor of the legislation to:

(A) obtain the legislator's comments;

(B) inform the legislator of the known dates by which each step of the rulemaking process must be completed; and

(C) provide the legislator with information about the time periods during which the legislator may comment on the proposed rules, including the opportunity to provide comment to the appropriate administrative rule review committee.

(ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.

(iii) Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as required in subsection ~~(2)(a)~~ *(2)(a)(i)*, a copy of the published notice must be sent to the primary sponsor contacted under this subsection (2)(d).

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) (a) For purposes of contacting primary sponsors under ~~subsections (2)(a) and~~ *subsection* (2)(d), a current or former legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail address, and telephone number on file with the secretary of state. The secretary of state shall update the contact information whenever the secretary of state receives corrected information from the legislator. An agency proposing rules shall consult the register when providing sponsor contact.

(b) An agency has complied with the primary bill sponsor contact requirements of this section when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone number on file with the secretary of state pursuant to subsection (8)(a)."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2011

CHAPTER NO. 42

[SB 60]

AN ACT ALLOWING A PARENT, GUARDIAN, OR CONSERVATOR TO REQUEST A SECURITY FREEZE FOR A MINOR, INCAPACITATED PERSON, OR PROTECTED PERSON WITH RESPECT TO CREDIT REPORTS; AND AMENDING SECTIONS 30-14-1726 AND 30-14-1727, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-1726, MCA, is amended to read:

"30-14-1726. Definitions. As used in 30-14-1726 through 30-14-1736, the following definitions apply:

(1) "Consumer" means an individual*, a parent or guardian in the case of a minor or of an incapacitated person as defined in 72-5-101, or a conservator in the case of a protected person as defined in 72-5-101*.

(2) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information on consumers for the purpose of furnishing credit reports to a third party and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing credit reports.

(3) "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency:

(a) bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and

(b) that is used or expected to be used in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit to be used primarily for personal, family, or household purposes;

(ii) employment purposes; or

(iii) any other purpose authorized under 15 U.S.C. 1681(b).

(4) "Person" means an individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(5) "Proper identification" means information sufficient to verify identity.

(6) "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(7) (a) "Security freeze" means a notice that:

(i) is placed in a consumer's credit report at the request of the consumer;

(ii) is subject to exceptions and exemptions provided in 30-14-1734;

(iii) prohibits the consumer reporting agency from releasing all or any part of the consumer's credit report or credit score without the express authorization of the consumer, as provided in 30-14-1729.

(b) A security freeze does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report."

Section 2. Section 30-14-1727, MCA, is amended to read:

"30-14-1727. Placement of security freeze. *(1)* A consumer may elect to place a security freeze on the consumer's own credit report by making a request:

~~(1)~~*(a)* in writing by regular or certified mail to a consumer reporting agency at an address designated by the consumer reporting agency to receive the request; or

~~(2)~~*(b)* directly to the consumer reporting agency through a secure electronic connection specified by the consumer reporting agency ~~by January 31, 2009~~.

(2) A consumer, acting in the capacity of a parent or guardian in the case of a minor or of an incapacitated person as defined in 72-5-101 or a conservator in the case of a protected person as defined in 72-5-101, may request that a consumer reporting agency place a freeze on the credit report of the minor or incapacitated or protected person by making a request in writing to the consumer reporting agency at an address designated by the consumer reporting agency to receive the request."

Approved March 23, 2011

CHAPTER NO. 43

[SB 65]

AN ACT MODIFYING THE PROCESS FOR REVISING THE STATE ENERGY POLICY; AMENDING SECTION 90-4-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-1003, MCA, is amended to read:

"90-4-1003. Energy policy development process. (1) ~~(a) Except as provided for in subsection (1)(b), each interim~~ *At the first interim committee meeting held during each interim*, the energy and telecommunications interim committee established in 5-5-230 shall review the state energy policy and, *if determined necessary by the committee, discuss at future meetings issues to be included in a revised policy and* recommend potential changes ~~to the state energy policy, pursuant to subsection (2)~~.

~~(b) During the 2009-2010 interim, the committee shall consult with a broad representation of stakeholders, including appropriate state agencies and the public, and focus on the following issues to be included in a revised state energy policy:~~

~~(i) increasing the supply of low-cost electricity with coal-fired generation;~~

~~(ii) rebuilding and extending electric transmission lines;~~

~~(iii) maximizing state land use for energy generation;~~

~~(iv) increasing energy efficiency standards for new~~ ~~construction;~~

~~(v) promoting conservation;~~

~~(vi) promoting energy efficiency incentives;~~

~~(vii) promoting alternative energy systems;~~

~~(viii) reducing regulations that increase ratepayers' energy costs; and~~

~~(ix) integrating wind energy.~~

(2) ~~Except as provided in subsection (1)(b), the~~ *If the* committee *decides to discuss issues to be included in a revised policy and recommend potential changes, it* shall consult with a broad representation of stakeholders, including appropriate state agencies and the public, in developing the ~~issues to be included within the~~ proposed~~,~~ revised state energy policy ~~each interim~~.

(3) ~~Each biennium, the~~ *If revisions to the state energy policy are proposed by the committee, then before September 15 of the year preceding a legislative session, the* committee shall forward its recommendations *for a proposed revised state energy policy* to the legislature and to the appropriate state agencies for adoption.

(4) In carrying out its responsibilities under this section, the committee shall use its interim budget, as allocated by the legislative council, and rely on the input of locally available experts and staff research to accomplish its responsibilities."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 2011

CHAPTER NO. 44

[SB 73]

AN ACT PROVIDING THAT THE RIGHTS AND OBLIGATIONS OF A STATE-OPERATED ADULT HEALTH CARE FACILITY PROVIDING SPECIAL EDUCATION SERVICES TO ITS RESIDENTS ARE EQUIVALENT TO THE OBLIGATIONS OF A SCHOOL DISTRICT; AND AMENDING SECTIONS 20-7-401 AND 20-7-411, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Child with a disability" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having a disability and who because of the disability needs special education and related services.

(2) "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(3) "Related services" means services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education.

(4) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(5) "State-operated adult health care facility providing special education services to its residents" means the Montana state hospital, the Montana developmental center, the Montana mental health nursing care center, or the Montana chemical dependency treatment center.

~~(5)~~*(6)* "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child."

Section 2. Section 20-7-411, MCA, is amended to read:

"20-7-411. Regular classes preferred — obligation to establish special education program. (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive environment. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district *or a state-operated adult health care facility providing special education services to its residents* shall provide or establish and maintain a special education program for each child with a disability who is 6 years of age or older and under 19 years of age.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability who is 3 years of age or older and under 7 years of age.

(4) (a) The board of trustees of a school district *or a state-operated adult health care facility providing special education services to its residents* may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age.

(b) Programs established pursuant to subsection (4)(a) do not obligate the state*,* ~~or~~ a school district*, or a state-operated adult health care facility providing special education services to its residents* to offer regular educational programs to a similar age group unless specifically provided by law.

(5) The board of trustees of a school district *or a state-operated adult health care facility providing special education services to its residents* may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, ~~or~~ by participating in a regional services program*, or by contracting for services from qualified providers. A state-operated adult health care facility providing special education services to its residents may also meet its obligation by coordinating appropriate services with the resident's school district of residence, the local high school district, or both.*

(6) The trustees of a school district *or a state-operated adult health care facility providing special education services to its residents* shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids."

Approved March 23, 2011

CHAPTER NO. 45

[SB 95]

AN ACT REVISING THE EXEMPTION OF AN ACKNOWLEDGMENT BY A NOTARY FROM THE STANDARDS FOR DOCUMENTS TO BE RECORDED BY COUNTY CLERKS; AND AMENDING SECTION 7-4-2636, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2636, MCA, is amended to read:

"7-4-2636. Standards for recorded documents — exemptions. (1) Unless accompanied by the appropriate fee required in 7-4-2637, a document submitted for recording that conveys an interest in real property must:

(a) be legibly printed or typed in black ink in at least 10-point typeface on white paper of not less than 20-pound weight, each page of which must be separated and have dimensions of either 8 1/2 x 11 inches or 8 1/2 x 14 inches;

(b) provide the names of the parties to the conveyance on the first or second page of any document with more than one page;

(c) provide a description of the property;

(d) have all signatures, initials, dates, handwriting, or notary stamps in blue or black ink;

(e) except as provided in subsection (1)(f) and except for page numbers or other designations, have margins that are clear of all markings in the following dimensions:

(i) at least 3 inches at the top of the first page and at least 1 inch at the top of the second and any subsequent pages;

(ii) at least 1 inch on the bottom of each page;

(iii) at least 1/2 inch on the sides of each page; and

(f) include the name and mailing address of the person to whom the document is to be returned in the margin in the upper left-hand corner of the first page within the 3-inch top margin and between the 1/2-inch side margins of each document submitted and may include legibly printed or typed transactional information.

(2) Unless accompanied by the fee required in 7-4-2637, all other documents submitted for recording must meet the requirements of subsections (1)(a), (1)(e), and (1)(f).

(3) (a) Except as provided in subsection (3)(b), only documents submitted for recording and filing that conform to the provisions of subsection (1) or (2) are considered standard documents for the purposes of 7-4-2637.

(b) Documents that are acknowledged as having been executed prior to April 28, 2007, must be accepted for recording and considered standard documents, regardless of whether they conform to the provisions of subsection (1) or (2).

(4) (a) An acknowledgment by a notary is exempt from the color, typeface, ~~and~~ *and* font requirements of this section. *If the notarial seal is made by impression of an embosser, the seal is exempt from the margin requirements of this section.*

(b) An officially certified court or other government document, whether from an in-state or out-of-state office, is exempt from the provisions of this section."

Approved March 23, 2011

CHAPTER NO. 46

[SB 152]

AN ACT INCREASING THE PENALTY FOR SEXUAL ASSAULT FOR SECOND AND SUBSEQUENT OFFENSES; AND AMENDING SECTION 45-5-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) *(a)* ~~A person convicted of~~ *On a first conviction for* sexual assault*, the offender* shall be fined *an amount* not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(c) On a third and subsequent conviction for sexual assault, the offender shall be fined an amount not to exceed $10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) (a) Subject to subsections (5)(b) and (5)(c), consent is ineffective under this section if the victim is:

(i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(ii) less than 14 years old and the offender is 3 or more years older than the victim;

(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service.

(b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other.

(c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service."

Approved March 23, 2011

CHAPTER NO. 47

[HB 58]

AN ACT DESIGNATING THE PEOPLES CREEK MINIMUM FLOW ACCOUNT WITHIN THE FORT BELKNAP-MONTANA COMPACT AS A STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-20-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-20-1007, MCA, is amended to read:

"85-20-1007. Peoples Creek minimum flow account. (1) A ~~private purpose trust~~ *state special revenue* account, called the Peoples Creek minimum flow account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds ~~appropriated by the state~~ for efficiency improvements and bypass structures for irrigation upstream from the Fort Belknap Reservation in the Peoples Creek Basin 40I and for a reservoir on the Reservation for the purpose of improving minimum stream flow.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the Peoples Creek minimum flow account must be made available to the water users and the tribes to cover the cost of construction of improvements as agreed to in the state and federal cost-share negotiations."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2011

CHAPTER NO. 48

[HB 268]

AN ACT ELIMINATING THE REFERENCE TO A REASONABLE AMOUNT WITH RESPECT TO A SERVICE CHARGE FOR ISSUING A BAD CHECK, DRAFT, CONVERTED CHECK, ELECTRONIC FUNDS TRANSFER, OR ORDER; AND AMENDING SECTION 27-1-717, MCA.

WHEREAS, all but three states, Montana, Oregon, and Texas, have removed the reasonableness standard from their check collection fee laws; and

WHEREAS, the people that often suffer the most from bad checks are the merchants that take the checks; and

WHEREAS, without a financial incentive to collect bad checks, some merchants may stop accepting checks as payment and not being able to write a check would create a substantial hardship for many consumers.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-717, MCA, is amended to read:

"27-1-717. Issuing a bad check, draft, converted check, electronic funds transfer, or order or stopping payment — civil liability — statute of limitations. (1) A person who issues a check, draft, converted check, electronic funds transfer, or order for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check, draft, converted check, electronic funds transfer, or order is issued, or the payee's assignee, if the check, draft, converted check, electronic funds transfer, or order is:

(a) dishonored for lack of funds or credit or because the issuer does not have an account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The person who issues the check, draft, converted check, electronic funds transfer, or order is liable to the payee or the payee's assignee for a service charge in ~~a reasonable~~ *an* amount~~,~~ not greater than $30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, converted check, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay the value of the check, draft, converted check, electronic funds transfer, or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of $100 or three times the amount for which the check, draft, converted check, electronic funds transfer, or order was issued. However, damages may not exceed the value of the check, draft, converted check, electronic funds transfer, or order by more than $500.

(4) The remedy provided by subsection (3) is available only if:

(a) the payee or the payee's assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3). The statute of limitations for the liability created under this section is 6 years from the date of the demand under subsection (2).

(7) This section applies to all checks, drafts, converted checks, electronic funds transfers, and orders, including those electronically presented for payment.

(8) Making partial payments of amounts owed under this section or entering into an agreement for paying in whole or in part amounts owed under this section does not waive any right that the payee or the payee's assignee may have under this section. Once a demand required under this section is made, the demand is not required to be repeated upon partial payment of amounts owed under this section."

Approved March 24, 2011

CHAPTER NO. 49

[SB 64]

AN ACT GENERALLY REVISING BANKING LAWS; REVISING ACCESS TO CERTAIN BANK HOLDING COMPANY RECORDS BY THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS OF THE DEPARTMENT OF ADMINISTRATION; ALLOWING DE NOVO INTERSTATE BANK BRANCHING THAT IS CONSISTENT WITH FEDERAL LAW; CLARIFYING INTERSTATE BANKING BY THE ACQUISITION OF EXISTING BANKS; GRANTING THE DEPARTMENT OF ADMINISTRATION RULEMAKING AUTHORITY; AND AMENDING SECTIONS 32-1-220, 32-1-372, AND 32-1-381, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-220, MCA, is amended to read:

"32-1-220. Access to holding companies and affiliated entities. The division may review the books and affairs of a bank holding company operating under the Bank Holding Company Act of 1956 during the course of a ~~regularly scheduled~~ safety and soundness examination *of the bank holding company's subsidiary bank to the extent that the records pertain to the operations and financial condition of the subsidiary bank or to the holding company's indebtedness. The authority granted in this section does not authorize the division to regulate or charge assessments to a bank holding company*. ~~whenever serious regulatory concerns arise that could jeopardize the safety and soundness of the particular subsidiary being examined. The purpose of the authority granted in this section is to resolve serious regulatory concerns that~~

~~arise during the examination from bank holding company transactions with the subsidiary being examined. The authority granted in this section does not authorize a review of the holding company as a standard procedure when the division has no serious regulatory concerns over transactions with the subsidiary being examined.~~"

Section 2. Section 32-1-372, MCA, is amended to read:

"32-1-372. Branch bank. (1) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. The formation and operation of a branch bank *in this state*~~, wherever located,~~ by a bank organized under the laws of this state require the prior approval of the department. A bank organized under the laws of this state may establish, acquire, or operate a branch bank or other office outside this state if approved by the department and if permitted by the laws of the jurisdiction where the branch bank or office is to be located.

(2) A branch bank may but is not required to offer all services and conduct all business authorized to be offered or conducted by the bank.

(3) A bank authorized to do banking business in this state may use a satellite terminal, as defined in 32-6-103, at any location permitted by the Montana Electronic Funds Transfer Act.

(4) A bank may continue to maintain and operate all branch banks and other banking offices, including detached facilities, that are in existence or authorized on July 1, 1997, without further consent, authorization, or approval of the department or the board. All offices established and maintained by a bank, other than the main banking house, at which deposits are received, checks are paid, or money is lent must be considered branch banks for all purposes under this title.

(5) A bank located in this state may provide services for other banks located in this state, whether or not those banks are affiliates.

(6) ~~A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. However, this section may not be interpreted to authorize de novo interstate bank branching and may not be interpreted to authorize a bank not located in this state to establish, acquire, or operate a branch bank in this state.~~ *With the prior approval of the appropriate federal regulator and state chartering authority, a bank that is not organized under the laws of this state may establish and operate a de novo branch in this state under the same terms that would apply to a bank organized under the laws of this state seeking approval from the department to establish and operate a de novo branch in this state.*

(7) A bank that is not organized under the laws of this state that applies to the appropriate federal regulator and state chartering authority under subsection (6) to establish and operate a de novo interstate branch in Montana shall simultaneously file a copy of the application with the department for notification purposes.

(8) The department is authorized to adopt rules to implement this section."

Section 3. Section 32-1-381, MCA, is amended to read:

"32-1-381. Purpose. ~~(1)~~ The purpose of 32-1-381 through 32-1-384 is to:

~~(a)~~*(1)* authorize interstate banking by the acquisition of existing banks within the framework of the "Douglas amendment" to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 through 1850), as amended;

~~(b)~~*(2)* provide a variety of banking alternatives in Montana in terms of the numbers and ownership of banks; and

~~(e)~~*(3)* conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1994. Any inconsistencies between the provisions of 32-1-381 through 32-1-384 and Public Law 103-328 must be resolved in favor of Public Law 103-328.

~~(2) Sections 32-1-381 through 32-1-384 do not authorize the establishment of a branch bank in Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions or transactions authorized in 32-1-381 through 32-1-384.~~"

Approved March 24, 2011

CHAPTER NO. 50

[SB 69]

AN ACT NAMING THE FIRST FLOOR OF THE EAST WING OF THE CAPITOL BUILDING IN HONOR OF FORMER REPRESENTATIVE FRANCIS BARDANOUVE; AMENDING SECTION 2-17-808, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, Francis Bardanouve was a Blaine County farmer-rancher from near Harlem whose service in the Montana Legislature spanned 5 decades; and

WHEREAS, he was first elected to the Montana House of Representatives in 1958 and reelected 17 times; and

WHEREAS, until his retirement in January 1995, he served a total of 18 sessions, 10 as the tight-fisted chairman of the powerful House Appropriations Committee; and

WHEREAS, he was instrumental in establishing and transforming many of the institutions that most Montanans simply take for granted; and

WHEREAS, he secured passage of legislation creating the Board of Investments, but only after traveling at his own expense to several states to study their systems; and

WHEREAS, he spent time in each of the state mental and hospital institutions to experience them firsthand and worked hard for better conditions, becoming the champion for the deinstitutionalization of many patients warehoused at the state hospitals at Warm Springs and Boulder; and

WHEREAS, he pressed for funding of a full-time professional staff for the Legislative Council, replacing a system in which lobbyists and corporate lawyers often drafted legislation; and

WHEREAS, he led the charge for the creation of the office of the Legislative Fiscal Analyst that gave the Legislature the power to independently analyze and set budget policy and priorities for the state, and was fond of telling stories about how funding for programs had previously been set by relying on individual legislators keeping running totals on slips of paper they kept in their vest pockets and where analyses of any type did not exist and justifications were largely a product of friendships; and

WHEREAS, of all of his many accomplishments, he often said he had but one regret in life, that he never got to ride his horse over the beautiful landscape that encompassed the prison ranch at Deer Lodge; and

WHEREAS, he was still on the advisory board for the Montana State Prison when he died in March 2002 and, while in the Legislature, played a major role in

turning the ranch from a business that consistently lost money to a viable business enterprise; and

WHEREAS, Francis Bardanouve was a humble man who never cared much for recognition and raised modesty to an art form; if he was aware of this proposal, he would likely kick up a fuss; and

WHEREAS, he was a compassionate man who always fretted about the well-being of his cattle, worrying about whether they had enough water and grass; and

WHEREAS, Representative Bardanouve was an ardent advocate of education and often demonstrated his dedication to and faith in the efficacy of higher education; and

WHEREAS, he was fearless and had a steel-trap mind; he was blessed with an earthy commonness that is so uncommon among most elected officials; and

WHEREAS, he constantly reminded his colleagues never to forget where they came from and not to let their positions go to their heads, commenting that "It never fails. All the sessions I have served in Helena, I go back to Harlem and someone passes me on the street and says, "Francis, where have you been all winter? Did you go down south?""; and

WHEREAS, Francis overcame a severe speech impediment after years of having been teased and taunted, disappearing without explanation in the winter of 1946 and going to Pennsylvania to have surgery on his cleft pallet; and

WHEREAS, the most remarkable part of his transformation into an inspirational and persuasive speaker on the floor of the House of Representatives was when he met and later married Venus, his speech therapist, who was the love of his life and who at age 50 made him a stepfather to her three children; and

WHEREAS, Representative Bardanouve's reputation and legend epitomize everything that is good and honorable about public service; his life and contributions serve to remind us that very ordinary Montanans can overcome adversity and perform remarkable feats; and

WHEREAS, this recommendation is a small commemoration for all that Francis Bardanouve, a beloved son of Montana, contributed during his time in office and the examples he set for current and future public servants.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-808, MCA, is amended to read:

"2-17-808. Placement of certain busts, plaques, statues, memorials, monuments, and art displays. (1) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, the 1972 Montana constitutional convention, and the women legislators' centennial;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the statues of:

(i) Wilbur Fiske Sanders;

(ii) Jeannette Rankin; and

(iii) Mike and Maureen Mansfield;

(e) the Montana statehood centennial bell;

(f) the gallery of outstanding Montanans;

(g) the Montana constitutional exhibit; ~~and~~

(h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors*; and*

(i) a plaque commemorating former representative Francis Bardanouve and lettering naming the first floor of the east wing of the capitol in honor of Francis Bardanouve.

(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statues of Thomas Francis Meagher and Lady Liberty;

(b) the plaques commemorating:

(i) Donald Nutter;

(ii) President George H. W. Bush; and

(iii) American prisoners of war and personnel of the United States armed services missing in action;

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;

(d) the Montana centennial square; and

(e) the monument of the ten commandments.

(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:

(a) the statue by Robert Scriver entitled "symbol of the pros";

(b) the monuments to the liberty bell, the veterans' and pioneer memorial building—landscape beautification project, Montana veterans, ~~and~~ Pearl Harbor survivors*,* and the peace pole;

(c) the sculptures of the herd bull and the eagle;

(d) the plaques commemorating the Montana national guard and Lewis and Clark; and

(e) the arrastra.

(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:

(a) the paintings of Dr. W. F. Cogswell and the paintings entitled "burning bush", "dryland farmer", "farm girl", "the river rat", "top of the world", "angus #68", "the source", "the Bozeman trail", and "the Mullan road";

(b) the art displays known as "Montana workers—mining, ranching, and building", "copper city rodeo", "dancing cascade", "save a piece of the sky", and "night light";

(c) the plaque commemorating Walt Sullivan, the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol;

(d) the busts of Lee Metcalf and Sam W. Mitchell; and

(e) the plaque and Lou Peters award commemorating Karl Ohs.

(5) The senate sculpture depicting the Lewis and Clark expedition is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(6) The council shall determine the specific placement of the items identified in subsections (1) through (4)."

Section 2. Effective date. [This act] is effective March 18, 2012.

Approved March 24, 2011

CHAPTER NO. 51

[SB 165]

AN ACT PROVIDING THAT A BOARD REGULATING A PROFESSION OR OCCUPATION MAY NOT ENFORCE STANDARDS AND RULES IN A MANNER THAT DISCRIMINATES AGAINST ANY PERSON LICENSED BY THE BOARD WITH REGARD TO HOW THE STANDARDS AND RULES ARE APPLIED TO OTHER PERSONS LICENSED BY THE BOARD OR IN A MANNER THAT RESTRAINS TRADE OR COMPETITION EXCEPT WHEN NECESSARY FOR PUBLIC HEALTH AND SAFETY; AND AMENDING SECTION 37-1-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards — quorum required. (1) A quorum of each board within the department shall:

(a) *(i)* set and enforce standards and *adopt and enforce* rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction; *and*

(ii) apply the standards and rules referred to in subsection (1)(a)(i) in a manner that does not discriminate against any person licensed by the board with regard to how the standards and rules are applied to other persons licensed by the board and that does not restrain trade or competition unless necessary to protect public health and safety;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

Approved March 24, 2011

CHAPTER NO. 52

[SB 186]

AN ACT PROVIDING THAT THE INITIAL LIMIT FOR A POLICY OR CERTIFICATE OF FUNERAL INSURANCE IS UP TO $15,000; AMENDING SECTION 33-20-1501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-1501, MCA, is amended to read:

"33-20-1501. Funeral insurance. (1) (a) "Funeral insurance" means an insurance policy or certificate that requires a one-time payment or the payment of premiums to provide for the costs of a funeral and burial for the policyholder or a named individual.

(b) Funeral insurance is a type of life insurance provided for in 33-1-208 and regulated under Title 33, chapter 20. The terms "burial insurance" and "preneed funeral insurance" have the same meaning as funeral insurance.

(c) Funeral insurance may be:

(i) included in a life insurance policy. This form of funeral insurance may not be sold by or through a person licensed under Title 37, chapter 19, regardless of whether a person licensed under Title 37, chapter 19, also has an insurance producer's license in this state.

(ii) a limited policy or certificate with a guaranteed death benefit that may be sold by:

(A) a licensed insurance producer; or

(B) a person licensed under Title 37, chapter 19, parts 3 and 4, if that person also is licensed as a life insurance producer in this state.

(d) Unless otherwise provided by Title 33, chapter 20, the *initial* policy or certificate limit under subsection (1)(c)(ii) is up to $15,000.

(2) Funeral insurance for the purposes of Title 33 is not a fixed amount prepaid into a trust or escrow fund, called a prearranged funeral plan, as described in 37-19-827, or a preneed arrangement, as defined in 37-19-101, and regulated under Title 37, chapter 19.

(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

(a) the policy is a life insurance product;

(b) the applicant may designate the beneficiary, including but not limited to a funeral director, mortician, mortuary, or undertaker, if the applicant has an insurable interest in the life of the insured; and

(c) subject to the provisions of 33-20-1502 and this section, the beneficiary may use the proceeds for any purpose.

(4) The funeral insurance policy must state that the insurance company shall, as a condition of paying the benefits of the insurance policy, require from the funeral director, mortician, mortuary, or undertaker:

(a) a certified copy of the certificate of death of the insured or other evidence of death satisfactory to the insurance company; and

(b) a certificate of completion signed by the funeral director, mortician, or undertaker stating that the funeral director, mortician, undertaker, or mortuary has delivered all the goods and performed all the services contracted for, by, or on behalf of the insured.

(5) (a) Notwithstanding the provisions of 33-15-414, the funeral insurance policy must contain an assignability clause that allows the policy or certificate to be assigned or otherwise transferred to another funeral director, mortician, mortuary, or undertaker licensed to do business in this state in conjunction with the assumption of the contractual obligation to provide the funeral goods or services to the extent permitted by state or federal law for the purpose of the insured's eligibility for supplemental security income benefits, medicaid, or other public assistance benefits.

(b) The assignability clause may not be used by a funeral director, mortician, mortuary, or undertaker to pledge, assign, transfer, borrow from, or otherwise encumber an insurance policy assigned to it for purposes of purchasing funeral goods or services prior to delivering all of the goods and performing all of the services contracted for, by, or on behalf of the insured.

(6) After the death of a person who at any time received medicaid benefits, a funeral director, mortician, mortuary, undertaker, or other person, including but not limited to the decedent's spouse, heir, devisee, or personal representative, who is the beneficiary of funeral insurance in excess of $5,000 in value designated to pay for the disposition of the medicaid recipient's remains

and for related expenses shall, after paying for the disposition and related expenses, pay all remaining funds to the department of public health and human services within 30 days following the receipt of the funeral insurance death benefit. The funds must be paid to the department regardless of any provision in a written contract, insurance policy, or other agreement entered into on or after January 1, 2008, directing a different disposition of the funds. Funds paid to the department under this section are not considered to be property of the deceased medicaid recipient's estate, and the provisions of 53-6-167 do not apply to recovery of the funds by the department."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2011

CHAPTER NO. 53

[HB 23]

AN ACT RELATING TO PRIMARY SPONSOR CONTACT REQUIREMENTS FOR PURPOSES OF RULEMAKING; ALLOWING THE SECRETARY OF STATE TO USE LEGISLATOR CONTACT INFORMATION PROVIDED BY THE LEGISLATIVE SERVICES DIVISION; CLARIFYING THE METHODS OF PRIMARY SPONSOR CONTACT FOR THE PURPOSES OF RULEMAKING; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which contact was made with the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was contacted, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(ii) the number of persons affected.

(2) (a) The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. Within 3 days of publication, a copy of the published proposal notice must be sent to interested persons who

have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The proposal notice required by subsection (1) must be published at least 30 days in advance of the agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other electronic communications system available to the public.

(d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice for a rule that initially implements legislation, the agency shall contact, as provided in subsection (8), the legislator who was the primary sponsor of the legislation to:

(A) obtain the legislator's comments;

(B) inform the legislator of the known dates by which each step of the rulemaking process must be completed; and

(C) provide the legislator with information about the time periods during which the legislator may comment on the proposed rules, including the opportunity to provide comment to the appropriate administrative rule review committee.

(ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.

(iii) Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor contacted under this subsection (2)(d).

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or

agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) (a) For purposes of contacting primary sponsors under ~~subsections (2)(a) and~~ *subsection* (2)(d), a current or former legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail address, and telephone number on file with the secretary of state. *The secretary of state may also use legislator contact information provided by the legislative services division for the purposes of the register.* The secretary of state shall update the contact information whenever the secretary of state receives corrected information from the legislator *or the legislative services division*. An agency proposing rules shall consult the register when providing sponsor contact.

(b) An agency has complied with the primary bill sponsor contact requirements of this section when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone number on file with the secretary of state pursuant to subsection (8)(a). *If the agency is able to contact the primary sponsor by using less than all of these three methods of contact, the other methods need not be used.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2011

CHAPTER NO. 54

[HB 53]

AN ACT CONSOLIDATING MANDATED BENEFITS FOR THE STATE EMPLOYEE GROUP BENEFIT PLAN AND MONTANA UNIVERSITY SYSTEM BENEFIT PLAN UNDER TITLE 2, MCA; AND AMENDING SECTIONS 2-18-704, 33-1-102, 33-22-129, 33-22-134, AND 33-22-136, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part

21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, ~~as amended,~~ unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act~~, 42 U.S.C. 1395, as amended,~~ if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by

19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act~~, 42 U.S.C. 1395, as amended~~.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

~~(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129.~~

~~(9)~~*(8)* (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection ~~(9)(a)~~ *(8)(a)* must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection ~~(9)~~ *(8)*.

(d) For purposes of this subsection ~~(9)~~ *(8)*:

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection ~~(9)(b)~~ *(8)(b)* and delivered by a physician or a health care professional supervised by a physician.

~~(10)~~*(9)* ~~(a) Except as provided in subsection (10)(b), upon~~ *Upon* renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must~~, as provided in 33-22-152,~~ continue to provide coverage for any ~~unmarried~~ dependent, as defined in ~~33-22-140(5)(b)~~ *the insurance contract or plan*, until the dependent reaches ~~25~~ *26* years of age ~~or marries, whichever occurs first~~. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in ~~33-22-140(5)(b)~~ *the insurance contract or plan*, may be required to be paid by the insured and not by the employer.

~~(b) An insurance contract or plan issued under this part for the state employee group insurance program and the university system group insurance program is not subject to subsection (10)(a).~~

~~(11)~~*(10)* Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member.

(11) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

(12) (a) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(b) Coverage must include a $250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(c) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(d) Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.

(e) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(f) This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the Montana university system as benefits to employees, retirees, and their dependents.

(13) (a) The state employee group benefit plans and the Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as are available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of the insurance contract or plan. The provisions of this subsection (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(b) The state employee group benefit plans and the Montana university system group benefits plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or dependent only if:

(i) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the state employee group benefit plans and the Montana university system group benefits plans or if the plans have not received timely premium payments;

(ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(iii) the state employee group benefit plans and the Montana university system group benefits plans are ceasing to offer coverage in accordance with applicable state law."

Section 2. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) ~~Except as otherwise provided in Title 33, chapter 22, this~~ *This* code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8*, or the Montana university system group benefits plans established in Title 20, chapter 25, part 13*.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code."

Section 3. Section 33-22-129, MCA, is amended to read:

"33-22-129. Coverage for outpatient self-management training and education for treatment of diabetes — limited benefit for medically necessary equipment and supplies. (1) Each group disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(2) (a) Coverage must include a $250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(b) Nothing in subsection (2)(a) prohibits an insurer from providing a greater benefit.

(3) Each group disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for diabetic equipment and supplies that is limited to insulin, syringes, injection aids, devises for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(4) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(5) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

(6) (a) This section does not apply to ~~the state employee group insurance program, the university employee group insurance program, or~~ any employee group insurance program of a city, town, county, school district, or other political subdivision of this state that on January 1, 2002, provides substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies provided for in subsection (3).

(b) ~~The state employee group insurance program, the university employee group insurance program, or any~~ *Any* employee group insurance program of a city, town, county, school district, or other political subdivision of this state that reduces or discontinues substantially equivalent or greater coverage after January 1, 2002, is subject to the provisions of this section."

Section 4. Section 33-22-134, MCA, is amended to read:

"33-22-134. Postmastectomy care. Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, also the primary care physician, in consultation with the patient, to be medically

necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer. This section also applies to ~~the state employee group insurance program, the university system employee group insurance program,~~ any employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974."

Section 5. Section 33-22-136, MCA, is amended to read:

"33-22-136. Insurance for spouse and dependents of deceased peace officer, game warden, or firefighter. (1) Any insurer, health service corporation, or health maintenance organization issuing group disability coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. This section also applies to ~~a state employee group insurance program, a university system group insurance program,~~ an employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement not regulated by the Employee Retirement Income Security Act of 1974 that provides coverage for a peace officer, game warden, firefighter, or volunteer firefighter. Except as provided in subsection (2), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as are available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of 33-22-523(2) and (3). The provisions of this subsection are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(2) A disability insurance issuer subject to the provisions of subsection (1) may discontinue or not renew the coverage of a spouse or dependent only if:

(a) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the disability insurance coverage or if the disability insurer has not received timely premium payments;

(b) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(c) the disability insurance issuer is ceasing to offer coverage in the group disability market in accordance with applicable state law."

Section 6. Contingent voidness. (1) If provisions of Public Law 111-148, the Patient Protection and Affordable Care Act, or Public Law 111-152, the Health Care and Education Reconciliation Act, that mandate that a health insurance plan, such as a plan governed under 2-18-704, provide coverage for a dependent until the dependent reaches 26 years of age are amended, repealed, or determined by the U.S. supreme court to be unconstitutional or unenforceable, then the amendment in 2-18-704(9), as amended by [this act], striking "25" and inserting "26" is void as of the effective date of the amendment, repeal, or court decision.

(2) Upon determination by the department of administration that the contingency described in subsection (1) has been met, the department shall notify the code commissioner.

Approved March 25, 2011

CHAPTER NO. 55

[HB 62]

AN ACT REPEALING PROCEDURES FOR CHALLENGING MUNICIPAL SEWER SYSTEM RATES BY FILING A COMPLAINT WITH THE PUBLIC SERVICE COMMISSION; REPEALING SECTION 7-13-4208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. The following section of the Montana Code Annotated is repealed:

7-13-4208. Procedure to challenge rates.

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2011

CHAPTER NO. 56

[HB 78]

AN ACT CLARIFYING THE DEFINITION OF "LOCAL OWNERS" IN THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; AMENDING SECTION 69-3-2003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(4) "Community renewable energy project" means an eligible renewable resource that:

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

(5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.

(6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(7) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.

(9) "Electric generating resource" means any plant or equipment used to generate electricity by any means.

(10) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that:

(i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less; or

(ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells;

(i) the renewable energy fraction from the sources identified in subsections (10)(a) through (10)(j) of electricity production from a multiple-fuel process with fossil fuels; and

(j) compressed air derived from any of the sources in this subsection (10) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.

(11) "Local owners" means:

(a) Montana residents*;* ~~or entities composed of~~

(b) general partnerships of which all partners are Montana residents;

~~(b)~~*(c)* ~~Montana small businesses;~~ *business entities organized under the laws of Montana that:*

(i) have less than $50 million of gross revenue;

(ii) have less than $100 million of assets; and

(iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana residents;

~~(c)~~*(d)* Montana nonprofit organizations;

~~(d)~~*(e)* Montana-based tribal councils;

~~(e)~~*(f)* Montana political subdivisions or local governments;

~~(f)~~*(g)* Montana-based cooperatives other than cooperative utilities; or

~~(g)~~*(h)* any combination of the individuals or entities listed in subsections (11)(a) through ~~(11)(f)~~ *(11)(g)*.

(12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

(14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

(15) "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

(16) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(18) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to proceedings begun on or after [the effective date of this act].

Approved March 25, 2011

CHAPTER NO. 57

[HB 79]

AN ACT ESTABLISHING A STATUTORY APPROPRIATION FOR CERTAIN INTEREST AND INCOME IN THE BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT TO IMPLEMENT THE WATER RIGHTS COMPACT; AMENDING SECTIONS 17-7-502 AND 85-20-1504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; *85-20-1504;* 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to

pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 2. Section 85-20-1504, MCA, is amended to read:

"85-20-1504. Blackfeet Tribe water rights compact mitigation account — use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact mitigation account. The department shall administer the account. Up to $650,000 each fiscal year of interest and earnings on the account must be deposited in the account.

(2) The Blackfeet Tribe water rights compact mitigation account may be used only for:

(a) expenditures for grants to or matching funds for federal or other grants to water right holders under state law for water from Birch Creek, Badger Creek, Cut Bank Creek, the Two Medicine River, and the portion of the Milk River within the exterior boundaries of the Blackfeet Indian Reservation for projects approved by the department to enhance water availability or otherwise mitigate the economic and hydrologic impacts on water right holders under state law caused by the development of the Blackfeet Tribe's water rights under a water rights compact pursuant to 85-2-702 quantifying the water rights of the Blackfeet Tribe; and

(b) implementation of the water rights compact among the Blackfeet Tribe, the state, and the United States and any associated agreements as may be specified in the compact or agreements.

(3) ~~(a) The department may expend up to $500,000 of the account to conduct preliminary feasibility studies and an associated environmental review for water compact purposes.~~

~~(b)~~ The department may expend up to $650,000 each fiscal year of the interest and income on the escrow account provided for in subsection (4)(b) for the purposes described in subsection (2)(b). *This money is statutorily appropriated, as provided in 17-7-502.*

(4) (a) At least $4.5 million of this account must be dedicated to mitigate impacts on water right holders under state law for use of water out of Birch Creek.

(b) The amount of $10 million in this account must be held in escrow. The department shall negotiate the terms of an escrow agreement.

(5) Except as provided in subsection (3), funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2011

CHAPTER NO. 58

[HB 81]

AN ACT CREATING A SECURITIES RESTITUTION ASSISTANCE FUND; PROVIDING FOR ORDERS AND JUDGMENTS REQUIRING PAYMENT INTO THE FUND; SPECIFYING A MAXIMUM AWARD AND ELIGIBILITY REQUIREMENTS FOR CLAIMANTS; PROVIDING PENALTIES FOR FALSE, INCOMPLETE, OR MISLEADING APPLICATIONS; GRANTING RULEMAKING AUTHORITY TO THE SECURITIES COMMISSIONER; AMENDING SECTIONS 17-7-502, 30-10-103, AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the "Securities Restitution Assistance Fund Act of Montana".

Section 2. Purpose. The purpose of [sections 1 through 8] is to provide restitution assistance to victims who:

(1) were awarded restitution in a final order issued by the commissioner or were awarded restitution in the final order in a legal action initiated by the commissioner; and

(2) have not received the full amount of restitution ordered before the application for restitution assistance is due.

Section 3. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Claimant" means a person who files an application for restitution assistance under this part on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Department" means the office of the securities commissioner as established in 2-15-1901.

(3) "Final order" means a final order issued by the commissioner or a final order in a legal action initiated by the commissioner.

(4) "Fund" means the securities restitution assistance fund created by [section 4].

(5) "Securities violation" means a violation of Title 30, chapter 10, and any related administrative rules.

(6) "Victim" means a person who was awarded restitution in a final order.

Section 4. Creation of securities restitution assistance fund. (1) There is an account in the state special revenue fund to the credit of the commissioner for use only for securities restitution assistance. This account may be referred to as the "securities restitution assistance fund" or "fund". The money in the fund is statutorily appropriated, as provided in 17-7-502, to the commissioner for the purposes provided in subsection (4).

(2) (a) The fund consists of amounts received by the commissioner from persons who have committed securities violations and from persons who have voluntarily contributed to the fund.

(b) Amounts received by the commissioner for deposit in the fund do not include administrative penalties or fines imposed under Title 30, chapter 10, and as referenced under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(c) The amounts received for the fund may not be placed in the general fund.

(3) Amounts received by the commissioner for deposit in the fund must be promptly turned over to the state treasurer for deposit in the fund created under subsection (1).

(4) The fund may be used by the commissioner only to pay awards of restitution assistance under [sections 1 through 8].

Section 5. Eligibility. (1) The following victims are eligible for restitution assistance:

(a) a natural person who is a resident of Montana; or

(b) a person, other than a natural person, domiciled in Montana.

(2) The commissioner may not award securities restitution assistance under [sections 1 through 8]:

(a) to more than one claimant per victim;

(b) unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution assistance from the fund is due; or

(c) if there was no award of restitution in the final order.

(3) If an award of restitution in a final order is overturned on appeal, the commissioner may not award restitution assistance under [sections 1 through 8].

(4) If, after the commissioner has made a securities restitution assistance award from the fund under [sections 1 through 8], the restitution award in the final order is overturned on appeal and all legal remedies have been exhausted, the claimant shall forfeit the restitution assistance awarded under [sections 1 through 8].

Section 6. Application for restitution assistance — maximum amount of restitution assistance award. (1) A person who is eligible for restitution assistance under [sections 1 through 8] may submit an application, in a manner and form prescribed by the commissioner, to the department.

(2) An application must be received by the department within 2 years after the deadline for payment of restitution established in the final order.

(3) The maximum award from the fund for each claimant is the lesser of $25,000 or 25% of the amount of unpaid restitution awarded in a final order.

Section 7. False application — penalties — statute of limitations. (1) A claimant who knowingly files or causes to be filed an application for restitution assistance or documents supporting the application any of which contain false, incomplete, or misleading information in any material aspect shall forfeit all restitution assistance provided from the fund.

(2) The commissioner may levy a fine of up to $10,000 on a claimant found to be in violation of subsection (1).

(3) A proceeding to determine a violation of subsection (1) must be in accordance with the contested case proceedings in the Montana Administrative Procedure Act, Title 2, chapter 4, parts 6 and 7.

(4) Notwithstanding the statutes of limitations provided in 30-10-305 through 30-10-307, any proceeding to determine a violation of subsection (1) must be initiated within 2 years of the date on which the department discovers the violation or, through the use of reasonable diligence, should have discovered the violation, whichever occurs later. Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, the department may not initiate a proceeding under this subsection more than 5 years after the date of the violation.

Section 8. Rulemaking authority. The commissioner may adopt rules regarding the department's processes for:

(1) reviewing applications for securities restitution assistance awards;

(2) making recommendations to the commissioner; and

(3) suspending awards or making a proportional payment of awards if the fund balance approaches zero.

Section 9. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; *[section 4];* 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory

appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 10. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter *and [sections 1 through 8]*, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner ~~of this state~~ *provided for in 2-15-1901*.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

(b) ~~The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).~~ *A federal covered adviser is not an investment adviser as defined in subsection (11).*

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

(A) makes any recommendation or otherwise renders advice regarding securities to clients;

(B) manages accounts or portfolios of clients;

(C) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(D) supervises employees who perform any of the foregoing; and

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter *and [sections 1 through 8]*.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(16) "Person"~~, for the purpose of parts 1 through 3 of this chapter,~~ means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition.

(b) Salesperson does not include an individual who represents:

(i) an issuer in:

(A) effecting a transaction in a security exempted by 30-10-104(1)~~, (2),~~ *through* (3)~~,~~ *or* (8)~~, (9), (10), or~~ *through* (11);

(B) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;

(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 if a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; or

(D) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

(22) (a) "Security" means any note~~;~~*,* stock~~;~~*,* treasury stock~~;~~*,* bond~~;~~*,* commodity investment contract~~;~~*,* commodity option~~;~~*,* debenture~~;~~*,* evidence of indebtedness~~;~~*,* certificate of interest or participation in any profit-sharing agreement~~;~~*,* collateral-trust certificate~~;~~*,* preorganization certificate or subscription~~;~~*,* transferable shares~~;~~*,* investment contract~~;~~*,* voting-trust certificate~~;~~*,* certificate of deposit for a security~~;~~*,* viatical settlement purchase agreement~~;~~*,* certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease~~;~~*,* or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 11. Section 30-10-305, MCA, is amended to read:

"30-10-305. Injunctions and other remedies — limitations on actions. (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order under this chapter, the commissioner may:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that:

(i) remains in effect until 10 days after the ~~hearing~~ *hearings* examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(ii) becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, the commissioner is entitled to reasonable ~~attorneys'~~ *attorney* fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against the person under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in any act or practice

constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability ~~founded~~ *based* on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability ~~founded~~ *based* on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or the commissioner's staff of the facts constituting the violation.

(c) An action may not be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued under this chapter unless it is brought within 5 years after the transaction on which the action is based.

(5) The commissioner in an administrative order requiring the payment of restitution or a court in a judicial order or judgment requiring payment of restitution may include a provision requiring a person determined to have violated any provision of parts 1 through 3 of this chapter to contribute an amount to the securities restitution assistance fund created by [section 4]."

Section 12. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 30, chapter 10, and the provisions of Title 30, chapter 10, apply to [sections 1 through 8].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective on passage and approval.

Section 15. Applicability. [This act] applies to final orders issued on or after [the effective date of this act].

Section 16. Termination. [This act] terminates June 30, 2017.

Approved March 25, 2011

CHAPTER NO. 59

[HB 86]

AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM LAWS; CLARIFYING DEFINITIONS; REVISING STATE RETIREMENT SYSTEM POLICY; AMENDING DUTIES OF AN EMPLOYER; CLARIFYING FAMILY LAW ORDERS; CLARIFYING PAYMENT OF OPTIONAL ALLOWANCES

AND SURVIVOR BENEFITS; CLARIFYING BENEFICIARY DESIGNATIONS; CLARIFYING RESPONSIBILITY FOR CORRECTION OF ERRORS; PROVIDING FOR REPORTING OBLIGATIONS OF A RETIRED MEMBER; AMENDING SECTIONS 19-20-101, 19-20-102, 19-20-203, 19-20-208, 19-20-305, 19-20-405, 19-20-701, 19-20-702, 19-20-703, 19-20-705, 19-20-715, 19-20-717, 19-20-721, 19-20-731, 19-20-733, 19-20-805, 19-20-1001, 19-20-1002, 19-20-1003, AND 19-20-1101, MCA; REPEALING SECTION 19-20-720, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means ~~the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b)~~ *a member's highest average earned compensation in 3 consecutive years, determined pursuant to 19-20-805, on which contributions have been made*.

(4) "Beneficiary" means one or more persons formally designated by a member~~,~~ *or* retiree~~, or benefit recipient~~ to receive a retirement allowance or payment upon the death of the member~~,~~ *or* retiree, ~~or benefit recipient~~ *except for a joint annuitant*.

(5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

~~(5)~~*(6)* "Creditable service" is that service defined by 19-20-401.

~~(6)~~*(7)* (a) "Earned compensation" means, except as limited *by subsections (7)(b) and (7)(c) or* by 19-20-715, remuneration~~, exclusive of maintenance, allowance, and expenses,~~ paid for ~~services by~~ *the service of* a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted ~~from the member's compensation~~.

(b) Earned compensation does not ~~mean~~ *include*:

(i) direct employer premium payments on behalf of members for ~~health or dependent care expense accounts or any employer contribution for health,~~ medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar ~~payment for any~~ form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; ~~or~~

(iv) any noncash benefit provided by an employer to or on behalf of ~~an employee.~~ *a member;*

~~(c)~~*(v)* ~~Unless~~ *termination pay unless* included pursuant to 19-20-716~~, earned compensation does not include termination pay.~~

~~(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.~~*;*

~~(e) Earned compensation does not include:~~

~~(i)~~*(vi)* compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

~~(ii)~~*(vii)* payment for sick, annual, or other types of leave ~~that is allowed~~ *paid* to a member ~~and that is~~ *prior to termination from employment or* accrued in excess of that normally allowed; ~~or~~

~~(iii)~~*(viii)* incentive or bonus payments paid to a member that are not part of a series of annual payments*; or*

(ix) any similar payment or reimbursement made to or on behalf of a member by an employer.

(c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.

~~(7)~~*(8)* "Employer" means:

(a) the state of Montana;

(b) a public school district, as provided in 20-6-101 and 20-6-701;

(c) the office of public instruction;

(d) the board of public education;

(e) an education cooperative;

(f) the Montana school for the deaf and blind, as described in 20-8-101;

(g) the Montana youth challenge program, as defined in 10-1-101;

(h) a state youth correctional facility, as defined in 41-5-103;

(i) the Montana university system;

(j) a community college; or

(k) any other agency or subdivision of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

~~(8)~~*(9)* "Full-time service" means service that is:

(a) at least 180 days in a fiscal year;

(b) at least 140 hours a month during *at least* 9 months in a fiscal year; or

(c) ~~full-time~~ *at least 1,080 hours in a fiscal year* under an alternative school calendar adopted by a school board ~~that is less than 180 days but meets minimum accreditation requirements of 1,080 hours~~ *and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system*.

~~(9)~~*(10)* "Internal Revenue Code" has the meaning provided in 15-30-2101.

(11) "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.

~~(10)~~*(12)* "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

~~(11)~~*(13)* "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

~~(12)~~*(14)* "Normal retirement age" means an age no earlier than 55 years of age, with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

~~(13)~~*(15)* "Part-time service" means service that is ~~less than 180 days in a fiscal year or less than 140 hours a month during 9 months in a fiscal year~~ *not full-time service*. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(14)~~*(16)* "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

~~(15)~~*(17)* "~~Retired~~ *"Retired", "retired* member"*, or "retiree"* means a person who has terminated employment that ~~qualified~~ *qualifies* the person for membership ~~under 19-20-302~~ and who has received at least one monthly retirement benefit paid pursuant to this chapter.

~~(16)~~*(18)* "Retirement allowance" *or "retirement benefit"* means a monthly payment due to a ~~person~~ *retired member* who has qualified for service or disability retirement or due to a *joint annuitant or* beneficiary ~~as provided in 19-20-1001~~.

~~(17)~~*(19)* "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(18)~~*(20)* "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(19)~~*(21)* "Service" means the performance of ~~instructional~~ duties ~~or related activities~~ that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(20)~~*(22)* "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

~~(21)~~*(23)* (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment ~~and on which employee and employer contributions have been paid as required by 19-20-716~~.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

~~(22)~~*(24)* "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made~~, as required by 19-20-602, 19-20-605, and 19-20-607,~~ and ~~who~~ has a right to a future retirement benefit.

~~(23)~~*(25)* "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 2. Section 19-20-102, MCA, is amended to read:

"19-20-102. Retirement system — policy. (1) The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is the state teachers' retirement system of the state of Montana, and the provisions of this chapter do not affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment to this chapter. The state teachers' retirement system is known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have the powers and privileges of a corporation that may be necessary to administer the provisions of this chapter.

(2) It is the policy of the state to:

(a) provide equitable retirement benefits to members of the teachers' retirement system based on each member's normal service ~~retirement~~ and salary;

(b) limit the effect on the retirement system of isolated salary increases received by a member, including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and

(c) limit the compensation that a retired member may earn after retirement while working in a position that would normally be covered under the teachers' retirement system to the amount determined under 19-20-731.

(3) It is the policy of the state to ensure that public employees are reported to the correct public retirement system. The retirement system shall enter into memoranda of understanding with the public employees' retirement board to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business."

Section 3. Section 19-20-203, MCA, is amended to read:

"19-20-203. Officers and employees of retirement board. (1) It is the duty of the retirement board to:

(a) elect a presiding officer from its membership;

~~(b) appoint a secretary, who may be one of its members;~~

~~(c)~~*(b)* employ *an executive director and other* technical or administrative employees who are necessary for the transaction of the business of the retirement system and establish their compensation pursuant to Title 2, chapter 18; and

~~(d)~~*(c)* designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(2) A quorum of the board is three members."

Section 4. Section 19-20-208, MCA, is amended to read:

"19-20-208. Duties of employer. Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5) each month, report the name, social security number, *time worked,* and gross earnings of each retired member of the system who has been employed in a ~~part-time teaching, administrative, or faculty position under the reemployment provisions of~~ *position that is reportable to the retirement system pursuant to* 19-20-731;

(6) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(7) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(8) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board;

(9) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement."

Section 5. Section 19-20-305, MCA, is amended to read:

"19-20-305. Alternate payees — family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "actuarially equivalent amount" means the portion of the participant's benefit transferred to an alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee's lifetime;

(b) "alternate payee" means the former spouse of the member or retiree who is entitled to an actuarially equivalent amount or a fixed amount of the member's or retiree's retirement benefit;

(c) "family law order" means a certified copy of a judgment, decree, or order of a court with competent jurisdiction concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(d) "participant" means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, *date of birth,* and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment *that is* not available to the affected participant under the retirement system *or that would require administration in a manner different from the administrative processes used by the retirement system for administration of retirement benefits in general*; or

(b) an amount of payment greater than that available to a participant.

(5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:

(i) an actuarially equivalent amount payable for the life of the alternate payee; or

(ii) a fixed amount, to be deducted from the participant's benefit, of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.

(b) (i) ~~The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service for which the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the participant.~~ *When a family law order directs payment of an actuarially equivalent amount payable to the alternate payee, either the amount of the participant's retirement benefit to be transferred to the alternate payee must be expressed as a percentage share of the retirement benefit payable to the participant or the percentage share must be readily determinable based on the factors provided in the family law order.* The participant's benefit must be reduced by the amount determined under this subsection (5)(b)(i).

(ii) The amount payable to the alternate payee, calculated under subsection (5)(b)(i), must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

(6) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a ~~percentage of the amount payable as determined by the formula in subsection (5)(b)(i)~~ *lump-sum payment up to the total fixed amount or equal to*

the percentage share of the participant's benefit transferred to the alternate payee as directed in the family law order.

(7) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned *between the participant and the alternate payee receiving an actuarially equivalent amount* in the same manner as determined under subsection (5)(b)(i).

(8) Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

(a) the date the participant begins receiving benefits; or

(b) the first day of the month following receipt of a certified family law order *and approval of the family law order by the retirement system*.

(9) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(10) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(11) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section.

(12) (a) In every circumstance, an actuarially equivalent amount payable to an alternate payee must terminate upon the death of the alternate payee. The amount may not be devised, bequeathed, or otherwise transferred by the alternate payee.

(b) A family law order may expressly provide that a fixed amount payable to an alternate payee may be transferred upon the death of the alternate payee to a beneficiary designated by the alternate payee. If a family law order does not expressly authorize an alternate payee to designate a beneficiary or if there is no beneficiary designation on file with the retirement system at the time of the alternate payee's death, the fixed amount payable to the alternate payee reverts to the participant or to the joint annuitant or beneficiary of the participant. A fixed amount payable to an alternate payee may not be devised, bequeathed, or otherwise transferred by the alternate payee in any other manner.

(13) The retirement system shall give effect to a family law order in a manner that conforms with all other applicable law pertaining to the administration of the retirement system. A family law order may not be construed to provide rights or benefits to any person beyond those rights or benefits expressly provided by law."

Section 6. Section 19-20-405, MCA, is amended to read:

"19-20-405. Limit on creditable service that may be awarded. The total creditable service for service purchased under 19-20-402 through 19-20-404, 19-20-408, ~~and~~ 19-20-410(1)*, and 19-20-426* may not exceed 5 years."

Section 7. Section 19-20-701, MCA, is amended to read:

"19-20-701. Benefits. *(1)* The retirement, disability, and other benefits of the retirement system must be granted on the basis of the provisions of this chapter. A member's written application for benefits must include a statement certifying that there has been a bona fide separation from service, including

whether there are any intentions to be reemployed with the same employer that would be prohibited under the Internal Revenue Code.

(2) If a member applies for a retirement benefit but dies before receiving the first monthly benefit allowance, benefits must be paid to the joint annuitant or beneficiary designated on the member's written application for a retirement allowance in the manner provided in 19-20-1001. If the member's written application did not include a designation of a joint annuitant or beneficiary, benefits must be paid to the beneficiary of record in the manner provided in 19-20-1001."

Section 8. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances — *certain period and life allowances.* (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the allowances described in subsection (2) or (3) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. ~~If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.~~

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the ~~person~~ *joint annuitant* that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's ~~designated beneficiary~~ *joint annuitant*.

(b) Option B—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's ~~designated beneficiary~~ *joint annuitant*.

(c) Option C—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's ~~designated beneficiary~~ *joint annuitant*.

(d) Upon election of an optional allowance and designation of a joint annuitant, any prior or subsequent designation of a beneficiary by the retired member is void.

(3) (a) In lieu of any other option available in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member's lifetime, whichever is greater:

(i) 10 years if the member is 75 years of age or younger at the time of retirement; or

(ii) 20 years if the member is 65 years of age or younger at the time of retirement.

(b) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

(4) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different ~~beneficiary~~ *joint annuitant* if:

(i) the original ~~beneficiary~~ *joint annuitant* has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the ~~designated beneficiary~~ *joint annuitant*.

(ii) the member has been divorced from the original ~~beneficiary~~ *joint annuitant* and the original ~~beneficiary~~ *joint annuitant* has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original ~~beneficiary~~ *joint annuitant* has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(5) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select a different actuarially equivalent optional allowance and designate a different ~~beneficiary~~ *joint annuitant* or to revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:

(a) the original ~~beneficiary~~ *joint annuitant* has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the ~~designated beneficiary~~ *original joint annuitant*.

(b) the member has been divorced from the original ~~beneficiary~~ *joint annuitant* and the original ~~beneficiary~~ *joint annuitant* has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original ~~beneficiary~~ *joint annuitant* has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(6) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(7) The retired member shall file the written application required by subsection (4) or (5) with the board within 18 months of the death or divorce of the ~~designated beneficiary~~ *joint annuitant*."

Section 9. Section 19-20-703, MCA, is amended to read:

"19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) Except as provided in subsection (5), the retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of an inactive member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(3)(a)(i).

(4) The life expectancy of a member or the member's ~~beneficiary~~ *joint annuitant* may not be recalculated after benefits commence.

(5) If a member terminates within 30 days of the last day of the school year, the member is considered to have terminated at the end of the member's contract, and the retirement allowance may not commence earlier than the first day of the month following the last scheduled pupil-instruction day or pupil-instruction-related day as described in 20-1-304, whichever is later."

Section 10. Section 19-20-705, MCA, is amended to read:

"19-20-705. Correction of errors. (1) *(a)* If a change or error in the records results in a ~~member or beneficiary~~ *benefit recipient or alternate payee* receiving from the retirement system more or less than the ~~member or beneficiary~~ *benefit recipient or alternate payee* would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments so that the actuarial equivalent of the benefit to which the ~~member or beneficiary~~ *benefit recipient or alternate payee* was correctly entitled will be paid.

(b) The right of the retirement system to actuarially adjust benefits payable to a benefit recipient or alternate payee may not bar the application of any other remedy or penalty available to the retirement system under this chapter or at law. The retirement system may pursue any or all remedies or options for recovery of amounts owed to it that, in its sole discretion, are necessary for the proper administration of the retirement system.

(c) The retirement system may recover amounts owed to it by withholding:

(i) as a lump sum, the full amount owed to it from a withdrawal or payout of the member's accumulated contributions;

(ii) a percentage not to exceed 50% of each monthly benefit payable until the amount owed is paid in full; or

(iii) any or all of the $500 death benefit.

(d) The retirement system's right to recover amounts owed to it has priority over the claim of any benefit recipient or alternate payee.

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

(a) adjustment of subsequent payments to the board from a member or an employer;

(b) collection of installment payments or a lump-sum payment from an employer; or

(c) collection of installment payments, a lump-sum payment, or a rollover payment from a member.

(3) Upon discovery of a forged signature on a retirement benefit application, the benefit must be corrected as provided in subsection (1).

(4) Interest accrues on contributions not reported or amounts overpaid to members at the actuarially assumed rate. Interest accrues from the date the

contributions were due or the date the benefits were paid in error. If the board finds that the error was caused by the teachers' retirement system, interest must be waived."

Section 11. Section 19-20-715, MCA, is amended to read:

"19-20-715. ~~Compensation limit~~ *Earned compensation — limitations.* (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the *earned* compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's *earned* compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716."

Section 12. Section 19-20-717, MCA, is amended to read:

"19-20-717. Effect of no designation or no surviving beneficiary *or joint annuitant*. (1) If a beneficiary is not designated or if no designated beneficiary *or joint annuitant* survives the ~~payment recipient~~ *member or retired member*, the estate of the ~~payment recipient~~ *member or retired member* is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior to the death of the ~~payment recipient~~ *member or retired member*. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or to the personal representative or executor of the survivor's estate.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the system, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

Section 13. Section 19-20-721, MCA, is amended to read:

"19-20-721. Designation of beneficiary. (1) ~~Each~~ *Except as otherwise provided in this chapter, each* member ~~or recipient of a benefit~~ shall file with the board a written ~~application nominating~~ *election designating* a beneficiary who may be eligible to receive the benefit provided pursuant to this chapter. The board shall provide a form that may be used for this purpose. A member ~~or benefit recipient~~ may revoke the ~~application and nominate~~ *written election and designate* a different beneficiary by filing a new form for this purpose with the board.

(2) A beneficiary who renounces an interest in the right to a payment of a benefit will be considered, for the purposes of further payment by the board of a renounced interest, to have predeceased the member or beneficiary."

Section 14. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits — *reporting obligation of retired member*. (1) (a) Except as [provided in 19-20-732 or as] otherwise provided in this section, a retired member may be employed part-time by ~~a school district, state agency, or unit of the university system~~ *an employer* in a position ~~eligible to participate in~~ *that is reportable to* the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) ~~For the purposes of this subsection (1), the~~ *The* maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all ~~remuneration~~ *amounts* paid to *or on behalf of* the retired member *and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year*, excluding:

(i) ~~the amount of~~ health insurance premiums *directly* paid by the employer on the retired member's behalf *for health care coverage provided by the employer*;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in [19-20-732 ~~and~~] ~~19-20-733~~, the retirement benefit of a retired member:

(a) employed in a part-time position ~~or~~ *but* earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as

soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be ~~canceled~~ *suspended* if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position *or employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed* must be ~~canceled beginning in the month in~~ *suspended effective on the date on* which the retired member returns to ~~full-time~~ employment.

(4) For purposes of this section, "~~position eligible to participate in~~ *the term "employed in a position that is reportable to* the retirement system" includes *any* work performed *or service provided* by a ~~retiree~~ *retired member to or on behalf of an employer, including but not limited to work performed or service provided* through a professional employer arrangement, an employee leasing arrangement, ~~or~~ *as* a temporary service contractor, *or as an independent contractor* ~~as those terms are defined in 39-8-102~~.

(5) For the purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

~~(5)~~*(7)* The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program. (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

Section 15. Section 19-20-733, MCA, is amended to read:

"19-20-733. Resumption of employment by retired member — suspension of benefits. (1) [Except as provided in 19-20-732,] if a retired member returns to ~~full-time~~ employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) Except as provided in subsection (4), upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option that the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service

credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection (4), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and ~~beneficiary~~ *joint annuitant* previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement ~~allowance~~ *benefit option and* with the same ~~beneficiary~~ *joint annuitant* originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).

(4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled. (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

Section 16. Section 19-20-805, MCA, is amended to read:

"19-20-805. ~~Earned compensation — part-time service~~ *Calculation of average final compensation.* *(1) Except as limited by this section, average final compensation is calculated by averaging the earned compensation paid to a member in 3 consecutive fiscal years of full-time service that yields the highest average.*

~~(1)~~*(2)* The earned compensation of a member who ~~retired~~ *retires* under 19-20-802*,* ~~or~~ 19-20-804*, or 19-20-902* and ~~had~~ *has* less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time

service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

~~(2)~~*(3)* (a) Subject to subsection ~~(2)(b)~~ *(3)(b)*, if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service reported to the teachers' retirement system, the member's average final compensation ~~may~~ *must* be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

(4) (a) If the benefits excluded from earned compensation pursuant to 19-20-101(7)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted benefit amounts must be included in the calculation of average final compensation.

(b) If benefits have been converted to earned compensation as described in subsection (4)(a) but have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have benefits converted to earned compensation, any converted benefits reported as earned compensation in the 3 years used to calculate average final compensation may be included in the calculation of average final compensation only as termination pay under 19-20-716(1)(b)."

Section 17. Section 19-20-1001, MCA, is amended to read:

"19-20-1001. Allowances for death of member *prior to retirement*. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804, without reference to

19-20-715*(2)*, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that *a beneficiary receiving* payments *under subsection (2)(a) dies and payments* made to the beneficiary do not equal the amount of the member's accumulated contributions ~~before~~ *at the time of* the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of $500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of $200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death ~~or if a family law order has been issued~~, then:

(a) each beneficiary ~~and alternate payee, if applicable,~~ is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.

(6) If a family law order has been issued, an alternate payee's rights under the family law order must be given priority over the rights of a beneficiary."

Section 18. Section 19-20-1002, MCA, is amended to read:

"19-20-1002. Payments upon death of retiree. (1) In the event of the death of a *retired* member ~~after retirement~~, a death benefit of $500 is payable to the *joint annuitant or* designated beneficiary.

(2) ~~In the event that~~ *If the deaths of a retired member and of the joint annuitant or all designated beneficiaries occur before the total retirement allowance* payments made to ~~a benefit recipient do not~~ *the retired member and to the joint annuitant or all designated beneficiaries* equal the amount of the member's accumulated contributions ~~before~~ *at the time of* the member's retirement, the difference between the total retirement allowance paid and the amount of the accumulated contributions must be paid to the *estate of the joint annuitant or to the estate of the longest-surviving* beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of death, the sum of $200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age."

Section 19. Section 19-20-1003, MCA, is amended to read:

"19-20-1003. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a *retired* member's beneficiary *or joint annuitant* may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(3)(a)(i) or a lump sum must be paid if that is the only benefit due the beneficiary."

Section 20. Section 19-20-1101, MCA, is amended to read:

"19-20-1101. Withholding of group insurance premium from retirement allowance. (1) A retired member who is a participant in an approved employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. Premiums withheld may be paid directly to the insurance carrier or employer of record at the time of retirement.

(2) Upon the death of a retired member, the *joint annuitant or* beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit and paid directly to the employer or the employer's insurance carrier.

(3) Each month, using the retirement system's online employer reporting system, the employer shall verify that all authorized insurance deductions are correct and notify the retired member of any changes."

Section 21. Repealer. The following section of the Montana Code Annotated is repealed:

19-20-720. Minimum monthly benefit allowance.

Section 22. Effective date. [This act] is effective July 1, 2011.

Approved March 25, 2011

CHAPTER NO. 60

[HB 92]

AN ACT REQUIRING THE PUBLIC SERVICE COMMISSION TO SET RATES FOR QUALIFYING SMALL POWER PRODUCTION FACILITIES USING AVOIDED COSTS OVER THE TERM OF THE CONTRACT; AMENDING SECTION 69-3-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-604, MCA, is amended to read:

"69-3-604. (Temporary) Standards for determination of rates and conditions. (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through (5).

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility ~~shall~~ *must* be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility ~~shall~~ *must* be established with consideration of the availability and reliability of the electricity produced.

(4) The commission ~~may~~ *shall* set these rates ~~by use of any of the following methods:~~

~~(a)~~ *using* the avoided cost over the term of the contract~~;~~

~~(b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or~~

~~(c) any other method that will promote the development of qualifying small power production facilities~~.

(5) The commission may adopt rules further defining the criteria for qualifying small power production facilities, their cost-effectiveness, and other standards. (Repealed on occurrence of contingency—secs. 1, 3, Ch. 284, L. 2003—see part compiler's comment.)"

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to contracts presented to the public service commission on or after [the effective date of this act].

Approved March 25, 2011

CHAPTER NO. 61

[HB 93]

AN ACT REQUIRING THAT REVENUE FROM FORFEITED FIRE HAZARD REDUCTION PERFORMANCE BONDS BE DEPOSITED INTO A STATE SPECIAL REVENUE FUND FOR AUTHORIZATION, MANAGEMENT, AND COMPLETION OF FIRE HAZARD REDUCTION ACTIVITIES; ESTABLISHING A FIRE HAZARD REDUCTION FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 76-13-410, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314;

10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; *[section 3];* 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 2. Section 76-13-410, MCA, is amended to read:

"76-13-410. Failure to comply. (1) If a person fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with the requirements of 76-13-407 and 76-13-408, the person may be enjoined from further cutting, clearing, and construction operations until the department has found the person to be in compliance with 76-13-407 and 76-13-408. The department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings must be conducted in the district court of the county where the land is located.

(2) If a person claims to have a minimum slash hazard but the department's inspection determines otherwise, the hazard reduction requirements of this part apply.

(3) If a person fails to comply with 76-13-407 or 76-13-408 and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the fire hazard reduction or management at the expense of the contractor or of the owner of the timber or other forest products cut or produced from the land upon which the unabated fire hazard remains.

(4) *(a)* The cost and expense of the fire hazard reduction or management work, plus 20% of the cost and expense of the work as a penalty, constitute a lien

upon the forest products cut or produced from the land and upon the real and personal property of the contractor. If payment of the sum demanded is not made to the department within 15 days of its written demand, the performance bond required by 76-13-408 and 76-13-409, upon notice to the contractor, must be automatically forfeited to the extent needed to cover the cost and expenses of reducing or managing the fire hazard, plus a penalty of 20% of the cost and expenses. If the bond is insufficient to cover the cost, expenses, and penalty, the department may bring legal action on behalf of the state to recover the cost, expenses, and penalty.

(b) Revenue from forfeited performance bonds required by 76-13-408 and 76-13-409 must be deposited into the fire hazard reduction fund established in [section 3].

(5) In addition to other remedies provided in this part, the department may, after notice, require a person to show cause why the department should not withhold the issuance of any further fire hazard reduction agreement or exemption certificate to a person that:

(a) harvests timber without a valid fire hazard reduction agreement; or

(b) has forfeited the performance bond on a fire hazard reduction agreement within the 2 preceding years and fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with 76-13-407 or 76-13-408 within 30 days after being notified by the department.

(6) If the person fails to show sufficient cause as required by subsection (5), the department may withhold the issuance of any further fire hazard reduction agreement or exemption certificate for a period not to exceed 3 years."

Section 3. Fire hazard reduction fund. (1) There is a fire hazard reduction fund in the state special revenue fund established in 17-2-102.

(2) There is deposited in the fund all revenue from forfeited performance bonds provided for in 76-13-410.

(3) The fund is statutorily appropriated, as provided in 17-7-502, to the department of natural resources and conservation for the purposes of authorizing, managing, and completing fire hazard reduction activities pursuant to this part.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 76, chapter 13, part 4, and the provisions of Title 76, chapter 13, part 4, apply to [section 3].

Section 5. Effective date. [This act] is effective July 1, 2011.

Section 6. Termination. [This act] terminates June 30, 2019.

Approved March 25, 2011

CHAPTER NO. 62

[HB 98]

AN ACT DIRECTING THAT MONEY RECEIVED FROM THE SALE OR LEASE OF STATE PARKS PROPERTIES BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND INSTEAD OF THE PERMANENT FUND; DIRECTING THE USE OF THE MONEY FOR STATE PARKS PURPOSES; AMENDING SECTIONS 10-3-801, 77-1-804, AND 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-801, MCA, is amended to read:

"10-3-801. Account created for funding search and rescue operations — rules. (1) There is an account in the state special revenue fund established in 17-2-102. The account must be administered by the disaster and emergency services division of the department exclusively for the purposes of search and rescue as provided in this section. The department may retain up to 5% of the money in the account to pay its costs of administering this section.

(2) There must be deposited in the account:

(a) fund transfers pursuant to 15-1-122(2)(f);

(b) fund transfers pursuant to 87-1-601~~(9)~~*(10)*. These funds may be used only as provided in 87-1-601~~(9)~~*(10)*.

(c) all money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for search and rescue operations.

(3) (a) Not less than 50% of the money in the account must be used by the department to defray costs of:

(i) local search and rescue units for search and rescue missions conducted through a county sheriff's office at a maximum of $6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.

(ii) a county sheriff's office at a maximum of $6,000 for each rescue mission, regardless of the number of counties or county search and rescue organizations involved.

(b) The remaining money in the account may be used by the department:

(i) to match local funds for the purchase of equipment for use by local search and rescue units at a maximum of $6,000 for each unit in a calendar year. The cost-sharing match must be 35% local funds to 65% from the account.

(ii) for reimbursement of expenses related to the training of search and rescue volunteers.

(4) The department may adopt rules to implement the proper administration of the account. The rules may include:

(a) a method of reimbursing local search and rescue units or a county sheriff's office, on a case-by-case basis, for authorized search and rescue operations conducted pursuant to subsection (3)(a), including verification of search missions, claims procedures, fiscal accountability, and the number and circumstances of search missions involving persons engaged in hunting, fishing, and trapping in a fiscal year;

(b) methods for processing requests for equipment matching funds and training funds made pursuant to subsection (3)(b), including any verification and accounting necessary to ensure that the provisions of subsection (3)(b) are met, and determining the percentage of all search missions involving persons engaged in hunting, fishing, or trapping in a fiscal year;

(c) a system involving input from representatives of county sheriff organizations and state and local search and rescue organizations for assistance

in verifying and processing claims for reimbursement, equipment, and training; and

(d) a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information."

Section 2. Section 77-1-804, MCA, is amended to read:

"77-1-804. Rules for recreational use of state lands — penalty. (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

(a) cabin site and home site leases and licenses;

(b) the seasonal presence of growing crops; and

(c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

(b) damage to surface improvements of the lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control; or

(g) the presence of buildings, structures, and facilities.

(6) Rules adopted under this section may impose restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on state lands is restricted to

federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to $1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in 87-1-601~~(7)~~*(8)*."

Section 3. Section 87-1-601, MCA, is amended to read:

"87-1-601. (Temporary) Use of fish and game money. (1) (a) Except as provided in subsections ~~(7)~~ *(8)* and ~~(9)~~ *(10)*, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections ~~(7)~~ *(8)* and ~~(8)~~ *(9)*, all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621, ~~and~~ section 2(3), Chapter 560, Laws of 2005, *and subsection (6) of this section,* money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the sale or lease of lands acquired and managed for the purposes of Title 23, chapter 1, must be deposited in the state special revenue fund in the account established for miscellaneous funds received for state parks and may be used only for the purposes of Title 23, chapter 1.

~~(6)~~*(7)* Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

~~(7)~~*(8)* Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

~~(8)~~*(9)* The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

~~(9)~~*(10)* (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs.

87-1-601. (Effective March 1, 2011) Use of fish and game money. (1) (a) Except as provided in 87-1-290 and subsections ~~(7)~~ *(8)* and ~~(9)~~ *(10)* of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to

the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections ~~(7)~~ *(8)* and ~~(8)~~ *(9)*, all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621, ~~and~~ section 2(3), Chapter 560, Laws of 2005, *and subsection (6) of this section,* money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the sale or lease of lands acquired and managed for the purposes of Title 23, chapter 1, must be deposited in the state special revenue fund in the account established for miscellaneous funds received for state parks and may be used only for the purposes of Title 23, chapter 1.

~~(6)~~*(7)* Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has

submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

~~(7)~~*(8)* Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

~~(8)~~*(9)* The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

~~(9)~~*(10)* (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2011

CHAPTER NO. 63

[HB 118]

AN ACT REVISING THE COMPOSITION OF THE BOARD OF DIRECTORS OF THE STATE COMPENSATION INSURANCE FUND; AMENDING SECTION 2-15-1019, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of state compensation insurance fund — legislative liaisons. (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) *(a)* At least four of the seven members shall represent state fund policyholders and may be employees of state fund policyholders. At least four

members of the board shall represent private~~, for-profit~~ enterprises. One of the seven members may be a licensed insurance producer. *One of the seven members must be a person with executive management experience in an insurance company or executive level experience in insurance financial accounting.*

(b) A member of the board may not:

~~(a)~~*(i)* except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

~~(b)~~*(ii)* be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply.

(8) There must be two legislative liaisons to the board consisting of members of the economic affairs interim committee provided for in 5-5-223. Subject to 5-5-234, the presiding officer of the economic affairs interim committee shall appoint the liaisons from the majority party and the minority party at the first interim committee meeting.

(9) Legislative liaisons shall serve from appointment through each even-numbered calendar year.

(10) A legislative liaison may:

(a) attend board meetings; and

(b) receive board meeting agendas and information relating to agenda items from the staff of the state fund.

(11) Legislative liaisons appointed pursuant to subsection (8) are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the economic affairs interim committee."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to appointments made by the governor to the state compensation insurance fund on or after [the effective date of this act].

Approved March 25, 2011

CHAPTER NO. 64

[HB 119]

AN ACT GENERALLY REVISING THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; CLARIFYING CERTAIN DEFINITIONS; CLARIFYING ELIGIBILITY REQUIREMENTS FOR FIRE COMPANIES AND FIREFIGHTERS; CLARIFYING AND ADDING REQUIREMENTS FOR DOCUMENTATION; REQUIRING THAT CERTAIN DISPUTES BE RESOLVED BEFORE PAYMENT OF A BENEFIT; CLARIFYING DEATH AND DISABILITY BENEFIT PROVISIONS; CLARIFYING FILING REQUIREMENTS FOR FIRE COMPANIES; EXTENDING EXISTING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-33-2110, 7-33-2311, 7-33-2316, 19-2-408, 19-17-102, 19-17-106, 19-17-108, 19-17-201, 19-17-203, 19-17-204, 19-17-401, 19-17-403, 19-17-404, 19-17-411, 19-17-501, 19-17-502, 19-17-503, AND 19-17-506, MCA; REPEALING SECTIONS 19-17-104,

19-17-402, 19-17-504, AND 19-17-505, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2110, MCA, is amended to read:

"7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) ~~No~~ *A* right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan~~,~~ or payments provided under ~~19-17-103~~ *Title 19, chapter 17,* may *not* be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter."

Section 2. Section 7-33-2311, MCA, is amended to read:

"7-33-2311. Fire companies authorized. (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificate in writing, signed by the presiding officer and secretary, providing the date of organization, name, officers, and roll of active and honorary members ~~or a copy of the certificate provided for in 19-17-402. The certificate and filing must be renewed annually on or before September 1~~.

(2) ~~A~~ *Pursuant to [section 11], a* fire company ~~is not allowed more than 28 certificate members~~ *shall file with the public employees' retirement board by September 1 of each year:*

(a) the annual certificate for the prior fiscal year;

(b) the roster of active and inactive members for the current fiscal year; and

(c) membership cards for all members."

Section 3. Section 7-33-2316, MCA, is amended to read:

"7-33-2316. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) ~~No~~ *A* right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan~~,~~ or payments provided under ~~19-17-103~~ *Title 19, chapter 17,* may *not* be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter."

Section 4. Section 19-2-408, MCA, is amended to read:

"19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as

otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the ~~volunteer firefighters'~~ ~~pension plan~~ *Volunteer Firefighters' Compensation Act*, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

(a) expenditures to purchase intangible assets for plan administration;

(b) expenses of the defined contribution plan;

(c) expenditures of funds allocated under 19-3-112(1)(b) to the education fund established in 19-3-112(1)(a); or

(d) expenses for an actuarial valuation under 19-2-405(2) performed during the first year of a biennium.

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan."

Section 5. Section 19-17-102, MCA, is amended to read:

"19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter *as provided in 19-17-108* during the most recently reportable fiscal year.

(2) "Allowance" means a total monetary and gift amount that is available to a volunteer firefighter from a fire company pursuant to [section 9].

~~(2)~~*(3)* "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

~~(3)~~*(4)* "Board" means the public employees' retirement board provided for in 2-15-1009.

~~(4)~~*(5)* "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

~~(5) "Department" means the department of administration.~~

(6) "Compensation" means remuneration for services rendered as a firefighter from the fire company requesting credit for that firefighter.

~~(6)~~*(7)* "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

~~(7)~~*(8)* "Designated official" means a representative of a fire company appointed by the fire chief to perform specified actions and includes but is not limited to a fire company supervisor, a fire company secretary, and a fire company presiding officer as described in 7-33-2312.

~~(8)~~*(9)* "Disability" or "permanent total disability" means *a duty-related injury resulting in* permanent total disability as defined in 39-71-116.

~~(9)~~*(10)* "Fire company" means ~~a fire company organized under 7-33-2311 in~~ *an organization of volunteer firefighters created under the authority of a*

governing board or commission to serve an unincorporated area, town, or village ~~and includes a volunteer fire department, a fire district, and a fire service area created under the provisions of Title 7, chapter 33~~.

~~(10)~~*(11)* "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(12) "Inactive member" means a member not credited with service under this chapter as provided in 19-17-108 during the most recently reportable fiscal year.

~~(11)~~*(13)* "Member" means a volunteer firefighter who has service credited under this chapter.

(14) "Pension benefit" means a full or partial payment for service earned as a volunteer firefighter and does not include payment for disability.

~~(12)~~*(15)* "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

(16) "Reimbursed" means the return by a fire company of an equivalent amount of money expended by a member for the benefit of the fire company.

~~(13)~~*(17)* "Retiree" or "retired member" means a member who is receiving full or partial ~~participation~~ *pension* benefits or disability benefits from the pension trust fund.

~~(14) "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.~~

~~(15)~~*(18)* "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits ~~and that is in addition to~~. *Supplemental insurance does not include* any insurance required by law, ~~including~~ *such as* workers' compensation insurance.

~~(16)~~*(19)* "Surviving spouse" means the spouse married to a member when the member dies.

~~(17)~~*(20)* "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

~~(18)~~*(21)* "Training" means instruction pertaining to firefighting that is supervised by the chief or a designated official.

~~(19)~~*(22)* "Volunteer firefighter" means a person who is ~~an active~~ *a* member of an eligible fire company and is not compensated for services as a firefighter."

Section 6. Section 19-17-106, MCA, is amended to read:

"19-17-106. Pension trust fund established — restrictions on use. (1) A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act ~~and the volunteer firefighters' pension plan~~.

(2) The pension trust fund must be funded on an actuarially sound basis. For purposes of this subsection, "actuarially sound basis" means that contributions must be sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.

(3) Except as provided in this section, a member or an employee of the ~~department~~ *board* or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the board; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust fund.

(4) The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, *and* their dependent children, ~~and~~ *for supplemental payments for* qualified fire companies*,* and for paying the reasonable administrative expenses of administering this chapter.

(5) Upon the termination of the pension trust fund, the substantial reduction in the number of members that would constitute a partial termination of the pension trust fund, or the complete discontinuance of contributions to the pension trust fund, the pension benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent that the benefit is funded."

Section 7. Eligible fire company. To be eligible to participate under this chapter, a fire company shall provide to the board documentation of the following:

(1) the fire company's name and mailing address;

(2) the name of the fire chief and designated official, if any;

(3) the portion of the fire district serviced by the fire company;

(4) that the area serviced is located in an unincorporated area;

(5) that the fire company maintains firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings for the storage of the equipment. The equipment and buildings must be valued at $12,000 or more.

(6) that the fire company was properly established by a governing board. Documentation under this subsection (6) must consist of:

(a) a copy of the minutes of the meeting during which the governing board established the fire company; or

(b) if the meeting minutes are unavailable, a copy of its first filing with the county clerk pursuant to 7-33-2311.

Section 8. Section 19-17-108, MCA, is amended to read:

"19-17-108. Credit for service as volunteer firefighter — records. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve *throughout the entire fiscal year* with a *single* fire company ~~throughout the entire fiscal year~~ *that is organized under Title 7, chapter 33, and continues to meet the requirements of [section 7]*.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies must be credited toward a member's eligibility for ~~full or partial~~ benefits.

(3) A volunteer firefighter ~~must~~ *may not* receive credit for service during any fiscal year ~~if~~ *unless*:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of training in ~~matters pertaining to~~ firefighting *duties as outlined in 19-17-105* under a formal program that has been formulated, supervised, and certified to the board by the chief or designated official of the fire company; *and*

(b) the volunteer firefighter's participation in the training program is documented in the fire company's records ~~filed and~~ maintained *pursuant to [section 10]* by the chief or designated official~~; and~~

~~(c) the fire company maintained firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings used for the storage of that equipment that all together are valued at $12,000 or more~~.

~~(4) The chief or designated official of each fire company shall keep and maintain training records for each current and former volunteer firefighter who is or was a member of the fire company.~~"

Section 9. Allowable payments to volunteer firefighters. (1) Allowable payments to volunteer firefighters include:

(a) payments of money reimbursed for documented expenses; and

(b) an allowance, including a stipend or per diem, that may not exceed $300 in a calendar year.

(2) Compensation, as defined in 19-17-102, is not an allowable payment.

(3) Records of all payments and allowances must be maintained pursuant to [section 10].

Section 10. Records information management. (1) The chief or designated official of a fire company shall maintain the records provided for in 19-17-108 and [section 9] for each active or inactive member of the fire company.

(2) Records must be maintained according to the state of Montana general records retention schedules, as published by the secretary of state pursuant to Title 2, chapter 6.

Section 11. Filing required reports — limitations. (1) The chief or designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file with the board an annual certificate, the current year's roster, and a membership card for each new member.

(2) (a) The annual certificate is a form reporting a fire company's membership eligibility for the previous fiscal year.

(b) The annual certificate must be completed on a form prescribed by the board and contain the date of organization of the fire company and the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and who successfully completed 30 hours of training during the preceding fiscal year, as required by 19-17-108.

(c) The chief or designated official shall subscribe and verify under oath, before a notary, that the fire company and members qualified under 19-17-108 and [section 7].

(d) The board shall maintain the certificate for the purpose of establishing service for members and eligibility for benefits.

(3) The roster must be signed by the fire chief or designated official, filed with the board, and contain information in writing that provides the names of the fire company, its date of organization, officers, and roll of active and inactive members for the current fiscal year. A roster may be updated to report new members but may not be retroactive.

(4) A membership card must be completed and filed with the board for each member who was a member on or before July 1, 2011, and for each new member who joins after July 1, 2011.

(5) The current fire chief shall file any late or amended annual certificates and the associated certified training records within 3 years of the original

annual certificate due date. An annual certificate may be amended only once. The board shall consider and may approve late filings. Information provided to the board by the fire chief must be in accordance with the board's rules.

(6) The current fire chief may request to appear before the board for consideration of the request to file a late or amended annual certificate.

Section 12. Corrections, audits, and penalties. (1) If fraud or error results in a member, surviving spouse, or dependent child receiving more or less of a benefit than that to which the member, surviving spouse, or dependent child is entitled, then on the discovery of the error the board shall correct the credit for service and, if necessary, equitably adjust the payments.

(2) The board may require a fire company to furnish additional information concerning members in connection with an audit or a claim for benefits or service.

(3) Upon discovery of falsified information, the fire company shall submit any and all requested documentation to the board.

(4) A person required to make a statement or affidavit by this chapter who willfully falsifies the statement or affidavit or a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction shall be fined an amount not exceeding $1,000 or be imprisoned for a term not exceeding 1 year, or both.

Section 13. Section 19-17-201, MCA, is amended to read:

"19-17-201. Administration of chapter. (1) The board is the trustee of all money collected under this chapter and has exclusive control of the administration of the pension trust fund except as otherwise provided by law.

(2) The ~~department~~ *board* shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is the custodian of the pension trust fund, subject to the control of the board for the administration of the fund and the board of investments for the investment of the fund.

(4) The board shall review the ~~sufficiency of~~ benefits provided under this chapter and recommend to the legislature those changes in benefits that may be ~~necessary~~ *available* for retired members and their beneficiaries ~~to maintain a stable standard of living~~.

(5) (a) Disputes regarding credited years of service must be resolved, either by staff of the board and the member or by the board prior to the commencement of the retirement or disability benefit.

(b) Payment of the benefit will be retroactive to the month following the month the retirement application was received by the board."

Section 14. Section 19-17-203, MCA, is amended to read:

"19-17-203. Rules to be made by board. The board shall make ~~such~~ rules ~~as~~ *that* it considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act ~~and the volunteer firefighters' pension plan,~~ *and that are* not inconsistent with the provisions ~~thereof~~ *of the Volunteer Firefighters' Compensation Act*."

Section 15. Section 19-17-204, MCA, is amended to read:

"19-17-204. Administrative expenses. Necessary expenses for the administration of the Volunteer Firefighters' Compensation Act ~~and the volunteer firefighters' pension plan~~ are a charge against the pension trust fund. The necessary administrative expenses attributable to this chapter must be paid from the investment earnings on the public employees' pension trust fund.

Before fiscal yearend closing, the board shall compute the expenses directly or proportionally attributable to this chapter over the past fiscal year and transfer that amount from the ~~volunteer firefighters' pension trust~~ *Volunteer Firefighters' Compensation Act* fund to the public employees' pension trust fund."

Section 16. Section 19-17-401, MCA, is amended to read:

"19-17-401. Eligibility for pension ~~and disability~~ benefits. (1) To qualify for a full ~~pension,~~ *or* partial pension~~, or disability~~ benefit under this chapter, a member ~~shall~~ *must* meet the requirements of subsections (2) ~~or~~ *and* (3) ~~and (4)~~.

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who ~~is prevented from completing~~ *does not complete* at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

~~(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.~~

~~(4)~~*(3)* Except as provided in ~~subsection (5)~~ *[section 20]*:

(a) to receive a pension ~~or disability~~ benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension ~~or disability~~ benefit under this chapter may not become an active member of any fire company.

~~(5) A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire company without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to service.~~"

Section 17. Section 19-17-403, MCA, is amended to read:

"19-17-403. Application for benefits. (1) A member may, as provided in this section, apply for retirement benefits before terminating service, but commencement of the benefits must be as provided in 19-17-411.

(2) A member, surviving spouse, or dependent child shall apply for benefits on a form provided by the board.

(3) The application must contain:

(a) the name, address, and date of birth of the member, surviving spouse, or dependent child;

(b) the date of birth of the member;

(c) the date of the member's death, if applicable; and

(d) the fiscal years during which service as an active member is claimed and the names of the fire companies with which the service was rendered.

(4) The board may require any proof of age, death, and service that it may consider proper, but it must accept a certificate properly completed and timely filed under *[section 11]* ~~19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977,~~ as prima facie proof of service."

Section 18. Section 19-17-404, MCA, is amended to read:

"19-17-404. Amount of pension ~~and disability~~ benefits. (1) ~~Each eligible~~ *A* member ~~must~~ *is eligible to* receive a pension ~~or disability~~ benefit as provided in this section.

(2) (a) Except as provided in subsection (2)(c), the full pension benefit paid to *an* eligible ~~members~~ *member* is $150 a month.

(b) A partial pension benefit *paid to an eligible member* is calculated by multiplying the full pension benefit in subsection (2)(a) by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20.

(c) The full pension benefit of a member who continued to be an active member after completing 20 years of service must be increased by $7.50 a month for each additional year of active service the member completed after 20 years of service, up to 30 total years of service.

~~(3) The disability benefit paid to an eligible member is calculated in the same manner as partial pension benefits described in subsection (2)(b), except that the numerator may not be less than 10.~~

~~(4) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner.~~"

Section 19. Section 19-17-411, MCA, is amended to read:

"19-17-411. Time benefits commence. (1) The pension benefit payable pursuant to this part may commence on*:*

(a) the first day of the month following the eligible member's last day of service*;* or

(b) ~~on~~ the first day of a later month following filing of the written application.

(2) The benefit may not commence prior to the date of the board's decision regarding any disputed credited years of service pursuant to 19-17-201.

~~(2) The disability retirement benefit payable pursuant to this part must commence on the day following the member's termination from service.~~

(3) Monthly survivorship benefits payable pursuant to this part must commence ~~on~~ the *first* day *of the month* following the *day of* death of the member."

Section 20. Return to service. (1) A retired member may return to service with a fire company without loss of benefits.

(2) A retired member returning to service under this section is not considered an active member earning credit for service.

(3) The fire chief shall prescribe the duties of any retired member returning to service.

Section 21. Section 19-17-501, MCA, is amended to read:

"19-17-501. Eligibility for medical and funeral expenses. (1) To qualify for medical expenses under ~~19-17-504~~ *19-17-502*, a volunteer firefighter must be ~~an active~~ *a* member of ~~a~~ *an eligible* fire company that is not covered by workers' compensation insurance *and must be listed on the fire company roster in the year* when the injury or illness occurs. *The injury or illness must have occurred in the line of duty, as described in 19-17-105.*

(2) To qualify for funeral expenses under ~~19-17-505~~ *19-17-503*, a volunteer firefighter must, at the time of death, be ~~an active~~ *a* member of ~~a~~ *an eligible* fire company *and must be listed on the fire company roster in the year the death*

occurs. The death must have occurred in the line of duty, as described in 19-17-105."

Section 22. Section 19-17-502, MCA, is amended to read:

"19-17-502. ~~Procedure for claiming medical~~ *Medical* expenses. (1) A member who claims medical expenses under ~~19-17-504~~ *this section* shall submit a *report of injury and medical* claim on a form provided by the board *in accordance with the board's rules*. The claim must be verified by the member and by competent medical authority. The claim must be submitted within ~~1 year~~ *12 months* from the date of incurring the injury or illness.

(2) The claim must contain:

(a) the name*, social security number,* and address of the member;

(b) the date, place, and manner of incurring the injury or illness;

(c) the name and address of the attending physician, surgeon, or nurse, if any;

(d) the dates of hospitalization, if hospitalized;

(e) an affidavit from the attending physician, surgeon, or nurse that describes the nature of the injury or illness, the number and dates of visits, and the expenses;

(f) if hospitalized, an affidavit from competent authority stating the nature of the injury or illness, the dates of hospitalization, and the expenses; *and*

(g) an affidavit from the chief or designated official of the fire company stating that ~~the fire company was organized under the laws of Montana in an unincorporated town or village, that~~ the member was, at the time of the injury or illness, ~~an active~~ *a* member of the *fire* company~~,~~ and that the injury or illness was incurred in the line of duty as described in 19-17-105.

(3) The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was incurred in the line of duty as described in 19-17-105 and that required the services of a physician, surgeon, or nurse, whether or not the member was hospitalized. The payments must equal the member's necessary and reasonable out-of-pocket medical expenses that resulted directly from the injury or illness and that were billed within 36 months following the date of the injury or illness.

(4) A total claim filed pursuant to subsection (1) may not exceed $25,000.

(5) If an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall authorize either a payment for the cost of a prosthesis or a payment of $1,500 to help defray the cost of a prosthesis, whichever is less.

(6) The prosthesis may be replaced when necessary, but not more often than every 60 months. The board shall authorize payment of not more than $1,500 of the replacement costs."

Section 23. Section 19-17-503, MCA, is amended to read:

"19-17-503. ~~Procedure for claiming funeral~~ *Funeral* expenses. *(1)* A person claiming the funeral expenses ~~provided for in 19-17-505~~ *under this section* shall submit ~~the claim on a form provided by the board, in accordance with the board's rules~~ *a claim form, the death certificate, and a copy of the bill from the funeral director. The claim must be submitted on a form provided by the board, in accordance with the board's rules, and must be verified by the claimant. The claim must be filed with the board within 12 months from the member's date of death.*

(2) The claim must contain:

(a) the name, social security number, and address of the member; and

(b) an affidavit from the chief or designated official of the fire company stating that the member was, at the time of death, a member of the fire company and that the death occurred in the line of duty as described in 19-17-105.

(3) The board shall authorize payment of reasonable expenses or $1,500, whichever is less, to help defray the funeral expense of the member whose death occurred in the line of duty, as described in 19-17-105."

Section 24. Section 19-17-506, MCA, is amended to read:

"19-17-506. Payment of medical and funeral expenses. When a claim under ~~19-17-504 or 19-17-505~~ *19-17-502 or 19-17-503* is received and approved by the board, payment must be made directly to the appropriate provider of the medical care or funeral services *or, if documentation is provided of the full payment of medical care or funeral expenses, to the claimant*."

Section 25. Eligibility for disability benefits. (1) To qualify for a disability benefit under this chapter, a member must meet the requirements of subsections (2) and (3).

(2) A member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(3) A member who receives a disability benefit may not return to service, either active or inactive, with any fire company.

Section 26. Amount of disability benefit. (1) A member is eligible to receive a disability benefit as provided in [section 25].

(2) The disability benefit paid to an eligible member is calculated by multiplying the full pension benefit as provided in 19-17-404 by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20, except the numerator may not be less than 10.

Section 27. Time disability benefits commence. The disability retirement benefit payable pursuant to this part must commence on the first day of the month following the member's termination from service but may not commence prior to the date of the board's decision regarding any disputed credited years of service pursuant to 19-17-201.

Section 28. Repealer. The following sections of the Montana Code Annotated are repealed:

19-17-104. Penalty for false statements or claims.

19-17-402. Certificate of eligibility.

19-17-504. Medical expenses.

19-17-505. Funeral expenses.

Section 29. Directions to code commissioner. (1) Section 19-17-103 is intended to be renumbered and codified as an integral part of Title 19, chapter 17, part 2.

(2) Sections 19-17-408, 19-17-409, and 19-17-410 are intended to be renumbered and codified as an integral part of Title 19, chapter 17, part 6.

Section 30. Codification instructions. (1) [Sections 7 and 9 through 12] are intended to be codified as an integral part of Title 19, chapter 17, part 1, and the provisions of Title 19, chapter 17, part 1, apply to [sections 7 and 9 through 12].

(2) [Section 20] is intended to be codified as an integral part of Title 19, chapter 17, part 4, and the provisions of Title 19, chapter 17, part 4, apply to [section 20].

(3) [Sections 25 through 27] are intended to be codified as an integral part of Title 19, chapter 17, and the provisions of Title 19, chapter 17, apply to [sections 25 through 27].

Section 31. Effective date. [This act] is effective July 1, 2011.

Approved March 25, 2011

CHAPTER NO. 65

[HB 120]

AN ACT REVISING THE LAW CONCERNING MINUTES FOR PUBLIC MEETINGS; CLARIFYING THAT AN OFFICIAL AUDIO RECORDING OF A PUBLIC MEETING CONSTITUTES THE OFFICIAL RECORD OF THE PUBLIC MEETING IF DESIGNATED AS OFFICIAL; REQUIRING A WRITTEN RECORD CONTAINING CERTAIN INFORMATION FOR A PUBLIC MEETING IF AUDIO MINUTES ARE DESIGNATED AS OFFICIAL MINUTES; AND AMENDING SECTION 2-3-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-212, MCA, is amended to read:

"2-3-212. Minutes of meetings — public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open ~~shall~~ *must* be kept and ~~shall~~ *must* be available for inspection by the public. *If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).*

(2) ~~Such minutes shall~~ *Minutes must* include without limitation:

(a) *the* date, time, and place of *the* meeting;

(b) a list of the individual members of the public body, agency, or organization *who were* in attendance;

(c) the substance of all matters proposed, discussed, or decided; ~~and~~ *and*

(d) at the request of any member, a record *of votes* by individual members ~~of~~ *for* any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting."

Approved March 25, 2011

CHAPTER NO. 66

[HB 127]

AN ACT GENERALLY REVISING GAMBLING LAWS; REVISING BINGO LAWS; REVISING VIDEO GAMBLING MACHINE LAWS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 23-5-112, 23-5-412, AND 23-5-608, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Associated gambling business" means a person who provides a service or product to a licensed gambling business and who:

(a) has a reason to possess or maintain control over gambling devices;

(b) has access to proprietary information or gambling tax information; or

(c) is a party in processing gambling transactions.

(4) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(5) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One or more numbers may appear in each square, except for the center square, which may be considered a free play. Numbers must be randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(6) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(7) "Bingo session" means all activities incidental to a series of bingo games conducted by a licensed operator beginning when the first bingo ball is drawn in the first game of bingo.

~~(7)~~*(8)* "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

~~(8)~~*(9)* "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

~~(9)~~*(10)* "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

~~(10)~~*(11)* "Department" means the department of justice.

~~(11)~~*(12)* "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, ~~or~~ route operator*, or operator* equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed *manufacturer,* distributor, route operator, or operator.

~~(12)~~*(13)* (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(c) The term does not include social card games played solely for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.

~~(13)~~*(14)* "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

~~(14)~~*(15)* "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

~~(15)~~*(16)* (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

~~(16)~~*(17)* "Gross proceeds" means gross revenue received less prizes paid out.

~~(17)~~*(18)* "House player" means a person participating in a card game who has a financial relationship with the operator, card room contractor, or dealer or who has received money or chips from the operator, card room contractor, or dealer to participate in a card game.

~~(18)~~*(19)* "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, ~~or~~ under part 5 of this chapter*, in a bingo game approved by the department under part 4 of this chapter,* or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table, or slot machine, except as provided in 23-5-153.

~~(19)~~*(20)* "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or

sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

~~(20)~~*(21)* (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility or advance deposit wagering with a licensed advance deposit wagering hub operator allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

~~(21)~~*(22)* "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(22)~~*(23)* "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(23)~~*(24)* "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

~~(24)~~*(25)* "Licensee" means a person who has received a license from the department.

~~(25)~~*(26)* "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(26)~~*(27)* (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

~~(27)~~*(28)* "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; ~~or~~

(b) possesses gambling devices or components of gambling devices for the purpose of testing them*; or*

(c) purchases gambling devices or components from licensed manufacturers, distributors, route operators, or operators as trade-ins or to refurbish, rebuild, or

repair to sell to licensed manufacturers, distributors, route operators, or operators.

~~(28)~~*(29)* "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established to support charitable activities, scholarships or educational grants, or community service projects.

~~(29)~~*(30)* "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

~~(30)~~*(31)* "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

~~(31)~~*(32)* "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(32)~~*(33)* "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

~~(33)~~*(34)* "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

~~(34)~~*(35)* "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

~~(35)~~*(36)* "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(36)~~*(37)* "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises *and may sell gambling equipment to a distributor or manufacturer*.

~~(37)~~*(38)* "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide

living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

~~(38)~~*(39)* (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(39)~~*(40)* "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 2. Section 23-5-412, MCA, is amended to read:

"23-5-412. Card prices and prizes — exception. (1) Except as provided in subsection ~~(3)~~ *(2)*:

(a) the price for an individual ~~bingo or~~ keno card may not exceed 50 cents; *and*

(b) a prize may not exceed the value of $100 for each individual ~~bingo game or~~ keno card~~; and~~

~~(c) it is unlawful to, in any manner, combine any bingo or keno games so as to increase the ultimate value of the prize~~.

~~(2) Bingo and keno prizes may be paid in either tangible personal property or cash.~~

~~(3) (a)~~*(2)* A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

~~(i)~~*(a)* no more than 50 cents is wagered on each combination of numbers; and

~~(ii)~~*(b)* a winning combination does not pay more than $100.

~~(b) A variation of the game of bingo, as approved by the department, in which prizes may be awarded for each winning bingo pattern on a card is permissible if:~~

~~(i) no more than 50 cents is wagered on each bingo pattern; and~~

~~(ii) a winning pattern does not pay more than $100.~~

~~(4) Any bingo card other than a standard card with 5 columns and 25 squares with 1 number appearing in each square or any card that allows the player to print numbers on the card must be approved by the department prior to being offered for play.~~

~~(5)~~*(3)* A player may give a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won.

(4) A bingo session must last at least 2 consecutive hours or 20 or more consecutive bingo games. A bingo session may not begin less than 2 hours after the conclusion of a prior session conducted on the same premises.

(5) Except as provided in subsections (6), (7), and (9):

(a) the price for an individual bingo card may not exceed $1;

(b) a prize may not exceed the value of $800 for each individual bingo game, and total bingo prize payouts may not exceed $3,000 during a bingo session.

(6) A variation of the game of bingo, as approved by the department, in which prizes may be awarded for each winning bingo pattern on a card is permissible if:

(a) no more than 50 cents is wagered on each bingo pattern; and

(b) a winning pattern does not pay more than $100.

(7) Subject to the department's approval, an operator licensed to conduct live bingo games may conduct up to five special bingo sessions a year, in which a bingo prize may not exceed the value of $800 and the total bingo prize payouts may not exceed $5,000 during the special bingo session. At least 30 days must elapse between the conclusion of one special bingo session and the beginning of the next special bingo session. Before the start of a special bingo session, the operator shall submit to the department an application for a special bingo session event permit. The application must be accompanied by a $10 fee, which the department shall retain for administrative purposes. An exempt charitable organization under 23-5-406 that offers live bingo activities is not eligible for a special bingo session event permit.

(8) Any bingo card other than a standard card with 5 columns and 25 squares with 1 number appearing in each square or any card that allows the player to print numbers on the card must be approved by the department prior to being offered for play.

(9) An exempt charitable organization under 23-5-406 that conducts live bingo activities at a place other than its main premises or place of operations:

(a) is not limited to a maximum per-session prize payout limit;

(b) may not charge more than 50 cents for an individual bingo card; and

(c) may not award a bingo prize that exceeds $100 in value.

~~(6)~~*(10)* If a licensed operator conducts a promotional game of chance involving bingo or keno, the *value of the* prize ~~limit provided for in subsection (1) applies to prizes~~ awarded as a result of the promotional game of chance *may not exceed $100*.

(11) It is unlawful to combine, in any manner, any bingo or keno games so as to increase the ultimate value of the prize. Bingo and keno prizes may be paid in either tangible personal property or cash or in any combination of tangible personal property and cash."

Section 3. Section 23-5-608, MCA, is amended to read:

"23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash — *ticket voucher expiration* — *rules.* (1) A video gambling machine may not allow more than $2 to be played on a game or award free games or credits in excess of the following amounts:

(a) $800 a game for a video draw poker machine; and

(b) $800 a game for a video keno or bingo machine.

(2) A licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher.

(3) The department may establish by rule a reasonable time period during which a player shall present a valid ticket voucher to the licensee for payment before the voucher may be considered expired and invalid."

Approved March 25, 2011

CHAPTER NO. 67

[HB 169]

AN ACT REPEALING THE ELECTRICITY BUYING COOPERATIVE ACT; AMENDING SECTION 35-19-311, MCA; REPEALING SECTIONS 35-19-101, 35-19-102, 35-19-104, 35-19-105, 35-19-106, 35-19-107, 35-19-108, 35-19-201, 35-19-202, 35-19-203, 35-19-204, 35-19-205, 35-19-301, 35-19-302, 35-19-303, 35-19-304, 35-19-305, 35-19-306, 35-19-307, 35-19-308, 35-19-309, 35-19-310, 35-19-311, 35-19-312, 35-19-313, 35-19-314, AND 35-19-315, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-19-311, MCA, is amended to read:

"35-19-311. Refunds to members — retention of unclaimed refunds. (1) Revenue of a buying cooperative for any fiscal year must~~, unless otherwise determined by a vote of the members,~~ be distributed by the buying cooperative to its members as patronage refunds, prorated in accordance with the patronage of the buying cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

(a) defray expenses of the buying cooperative and of the operation and maintenance of its facilities during the fiscal year;

(b) pay interest and principal obligations of the buying cooperative coming due in the fiscal year;

~~(c) finance or provide a reserve for the financing of the construction or acquisition by the buying cooperative of additional facilities to the extent determined by the board of trustees;~~

~~(d)~~*(c)* provide a reasonable reserve for working capital; and

~~(e)~~*(d)* provide a reserve for the payment of indebtedness of the buying cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year.

(2) This section may not be construed to prohibit the payment by a buying cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3) ~~A buying cooperative shall, upon the action of the board of trustees, retain redeemed patronage refunds that are allocated to its members and that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Unclaimed redeemed patronage refunds retained by the buying cooperative must be used for educational purposes~~ *If a buying cooperative possesses redeemed patronage refunds, those funds must be distributed to members by December 31, 2011.*"

Section 2. Repealer. (1) The following sections of the Montana Code Annotated are repealed:

35-19-101. Short title.

35-19-102. Definitions.

35-19-104. Permissible purpose of incorporation.
35-19-105. Name.
35-19-106. Incorporators.
35-19-107. Membership.
35-19-108. Exemption from taxes.
35-19-201. Powers of buying cooperative.
35-19-202. Restrictions on powers of buying cooperative.
35-19-203. Waiver of notice.
35-19-204. Nonliability of members, trustees, and officers.
35-19-205. Authority to take acknowledgments.
35-19-301. Articles of incorporation.
35-19-302. Amendment of articles of incorporation.
35-19-303. Change of principal office without amendment.
35-19-304. Bylaws.
35-19-305. Meetings of members.
35-19-306. Initiative by members — approval of trustees not required.
35-19-307. Board of trustees — number — qualifications — removal — compensation — joint memberships.
35-19-308. Trustees — term — quorum — powers.
35-19-309. Voting districts.
35-19-310. Officers.

(2) The following sections of the Montana Code Annotated are repealed:

35-19-311. Refunds to members — retention of unclaimed refunds.
35-19-312. Disposition or encumbrance of property.
35-19-313. Dissolution of buying cooperative that has not commenced business.
35-19-314. Dissolution and winding up of buying cooperative that has commenced business.
35-19-315. Incorporation, amendment, and dissolution filings.

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Transition. (1) Except as provided in subsection (2), an electricity buying cooperative in existence on [the effective date of this section] shall dissolve and wind up its affairs in accordance with 35-19-311 through 35-19-315.

(2) (a) An electricity buying cooperative shall honor terms and conditions of contracts executed on or before [the effective date of this section].

(b) Upon expiration of those contracts, an electricity buying cooperative shall dissolve and wind up its affairs within 1 year of the contract's expiration.

Section 5. Effective dates — contingency. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2(2)] is effective on the date that the secretary of state notifies the code commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed.

Approved March 25, 2011

CHAPTER NO. 68

[HB 176]

AN ACT PROVIDING THAT A PERSON WITH A LIFE-THREATENING ILLNESS MAY RECEIVE A ONE-TIME ANTELOPE LICENSE; ESTABLISHING TERMS AND CONDITIONS; AMENDING SECTION 87-2-706, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-706, MCA, is amended to read:

"87-2-706. Drawing for special antelope licenses — *licenses for those with life-threatening illness.* (1) In the event that the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, the licenses must be awarded by a drawing. The department shall provide for those persons making valid application for special antelope licenses a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) The department shall reserve for applicants who are nonambulatory and have a permanent physical disability, as determined by the department, up to 25 of the total special antelope licenses authorized for sale in the state, excepting those licenses issued pursuant to 87-2-803(5), for use in the district designated by the commission. If the number of valid disabled applicants exceeds the number of licenses available, the department may hold a drawing in which all applicants have an equal chance of being selected.

(3) (a) The department may issue a special antelope license to a resident or nonresident who has been diagnosed with a life-threatening illness unless the person qualifies for a license pursuant to 87-2-805. As used in this subsection, "life-threatening illness" means any progressive, degenerative, or malignant disease or condition that results in a significant threat, likelihood, or certainty that the person's life expectancy will not extend more than 1 year from the date of the request for the license unless the course of the disease is interrupted or abated.

(b) To qualify for the license, the department must receive documentation that person has been diagnosed with a life-threatening illness from a licensed physician.

(c) The license may be issued on a one-time basis for one hunting season.

(d) In exercising hunting privileges, the person must conduct all hunting within the terms and conditions of the license issued.

(e) The department may issue up to 25 licenses pursuant to this subsection (3) annually. These licenses do not count against any quota set by the department. Licenses issued pursuant to this subsection (3) do not count against the number of special antelope licenses reserved for people with permanent disabilities as provided in subsection (2).

~~(3)~~*(4)* The department may promulgate rules that are necessary to implement this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2011

CHAPTER NO. 69

[HB 233]

AN ACT REQUIRING CERTAIN QUALIFYING SMALL POWER PRODUCTION FACILITIES TO ACCEPT A RATE SCHEDULE APPROVED BY THE PUBLIC SERVICE COMMISSION; EXTENDING THE TIME WITHIN WHICH THE PUBLIC SERVICE COMMISSION IS REQUIRED TO RENDER A DECISION; AMENDING SECTION 69-3-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-603, MCA, is amended to read:

"69-3-603. (Temporary) Required sale of electricity under rates and conditions prescribed by commission. (1) ~~If~~ *Except as provided in subsection (3), if* a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within ~~120~~ *180* days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination ~~shall~~ *must* be made according to the standards prescribed in 69-3-604.

(3) (a) If a qualifying small power production facility is eligible to sell electricity to a utility pursuant to a rate schedule approved by the commission, neither the qualifying small power production facility nor the utility may petition the commission in accordance with subsection (2) to authorize a rate or term different from that in the rate schedule.

(b) A qualifying small power production facility may file a complaint pursuant to 69-3-321 if the facility feels the rate schedule approved by the commission is unreasonable. (Repealed on occurrence of contingency—secs. 1, 3, Ch. 284, L. 2003—see part compiler's comment.)"

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to contracts executed on or after [the effective date of this act].

Approved March 25, 2011

CHAPTER NO. 70

[HB 252]

AN ACT PROHIBITING THE DEPARTMENT OF TRANSPORTATION FROM RECOVERING FROM CERTAIN TRANSIT PROVIDERS INDIRECT COSTS FOR U.S. FEDERAL TRANSIT ADMINISTRATION GRANTS; AND AMENDING SECTION 17-1-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-106, MCA, is amended to read:

"17-1-106. (Temporary) Agency recovery of indirect costs — exemption. (1) An agency receiving nongeneral funds shall, in accordance with all applicable regulations, guidelines, or grant rules governing those funds, negotiate indirect cost reimbursement amounts and methodologies so that the agency may recover indirect costs.

(2) Except for funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, an agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) The department of transportation may not recover indirect costs from a local government for the community transportation enhancement program.

(4) The department of transportation may not recover indirect costs for administration of a U.S. federal transit administration grant, including but not limited to grants provided for in 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, and 49 U.S.C. 5317, from a local government, nonprofit organization, or public transportation provider that provides transit services.

~~(4)~~*(5)* An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intra-agency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

~~(5)~~*(6)* Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency. The department shall provide technical assistance to an agency on how to build an indirect cost proposal.

~~(6)~~*(7)* Except as provided for a unit of the university system under 20-25-427, indirect costs recovered by an agency to pay the agency's indirect costs under 17-1-105 must be deposited as provided in 17-1-105. All other indirect costs must be deposited in the fund from which the indirect costs were originally paid. (Terminates June 30, 2011—sec. 82, Ch. 489, L. 2009.)

17-1-106. (Effective July 1, 2011) Agency recovery of indirect costs — exemption. (1) An agency receiving nongeneral funds shall, in accordance with all applicable regulations, guidelines, or grant rules governing those funds,

negotiate indirect cost reimbursement amounts and methodologies so that the agency may recover indirect costs.

(2) An agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) The department of transportation may not recover indirect costs from a local government for the community transportation enhancement program.

(4) The department of transportation may not recover indirect costs for administration of a U.S. federal transit administration grant, including but not limited to grants provided for in 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, and 49 U.S.C. 5317, from a local government, nonprofit organization, or public transportation provider that provides transit services.

~~(4)~~*(5)* An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intra-agency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

~~(5)~~*(6)* Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency. The department shall provide technical assistance to an agency on how to build an indirect cost proposal.

~~(6)~~*(7)* Except as provided for a unit of the university system under 20-25-427, indirect costs recovered by an agency to pay the agency's indirect costs under 17-1-105 must be deposited as provided in 17-1-105. All other indirect costs must be deposited in the fund from which the indirect costs were originally paid."

Approved March 25, 2011

CHAPTER NO. 71

[HB 287]

AN ACT AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MAKE WOLF CARCASSES OR PARTS OF WOLF CARCASSES RETRIEVED DURING WOLF MANAGEMENT ACTIVITIES AVAILABLE TO THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD; AUTHORIZING THE BOARD TO SELL OR AUCTION THE CARCASSES OR PARTS OF CARCASSES TO BENEFIT THE LIVESTOCK LOSS REDUCTION AND MITIGATION PROGRAM; AND AMENDING SECTIONS 2-15-3113 AND 87-1-217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss reduction and mitigation board. (1) The livestock loss reduction and mitigation board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss reduction and mitigation board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss reduction and mitigation board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113.

(4) The livestock loss reduction and mitigation board may sell or auction any wolf carcasses or parts of wolf carcasses received pursuant to 87-1-217. The proceeds, minus the costs of the sale including the preparation of the carcass or part of the carcass for sale, must be deposited into the livestock loss reduction and mitigation special revenue account established in 81-1-110(2)(a) and used for the purposes of 2-15-3111 through 2-15-3114."

Section 2. Section 87-1-217, MCA, is amended to read:

"87-1-217. Policy for management of large predators — legislative intent. (1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:

(a) protect humans, livestock, and pets;

(b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and

(c) preserve citizens' opportunities to hunt large game species.

(2) As used in this section:

(a) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and

(b) "large predators" means bears, mountain lions, and wolves.

(3) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

(4) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock, so long as the state objective for breeding pairs has been met. For the purposes of this subsection, "problem wolves" means any individual wolf or pack of wolves with a history of livestock predation.

(5) The department shall work with the livestock loss reduction and mitigation board and the United States department of agriculture wildlife services to establish the conditions under which wolf carcasses or parts of wolf carcasses are retrieved during wolf management activities and when those carcasses or parts of carcasses are made available to the livestock loss reduction and mitigation board for sale or auction pursuant to 2-15-3113."

Approved March 25, 2011

CHAPTER NO. 72

[HB 356]

AN ACT REVISING THE DEFINITION OF ACCREDITED COLLEGE OR UNIVERSITY AS APPLIED TO ADDICTION COUNSELORS TO INCLUDE INSTITUTIONS OF HIGHER LEARNING THAT ARE ACCREDITED BY A NATIONAL ACCREDITING ASSOCIATION; AND AMENDING SECTION 37-35-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-35-102, MCA, is amended to read:

"37-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by a regional *or national* accrediting association for institutions of higher learning.

(2) "Addiction" means the condition or state in which an individual is physiologically or psychologically dependent upon alcohol or other drugs. The term includes chemical dependency as defined in 53-24-103.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "Licensed addiction counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of addiction counseling and who is licensed under the provisions of this chapter."

Approved March 25, 2011

CHAPTER NO. 73

[HB 367]

AN ACT DELAYING IMPLEMENTATION OF THE MOTOR VEHICLE LIABILITY INSURANCE VERIFICATION PROGRAM; DELAYING USE OF THE SYSTEM FOR VEHICLE REGISTRATION PURPOSES UNTIL JANUARY 1, 2013; GRANTING THE DEPARTMENT OF JUSTICE RULEMAKING AUTHORITY TO DETERMINE A SCHEDULE FOR IMPLEMENTING THE PROGRAM; AMENDING SECTIONS 61-3-303, 61-3-312, 61-6-105, 61-6-157, AND 61-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-303, MCA, is amended to read:

"61-3-303. Original registration — process — fees. (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner is domiciled.

(2) Except as provided in subsection (3) and subsection (11), the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer is to be registered, the owner delivers an application for a certificate of title to the department, its authorized agent, or a county treasurer; or

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which a certificate of title and registration were issued in another jurisdiction and for which registration is required under 61-3-701 after the county treasurer examines the current out-of-jurisdiction registration certificate or receipt and receives payment of the fees required in 61-3-701. The county treasurer may ask the motor vehicle, trailer, semitrailer, or pole trailer owner to provide additional information, prescribed by the department, to ensure that the electronic record of registration maintained by the department is complete.

(b) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner's control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of $1 or more if the person indicates that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts; and

(c) a donation of $1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) must be forwarded by the respective county treasurer to the department for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts.

(9) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (5)(c) must be forwarded by the respective county treasurer to the department for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.

(11) Beginning ~~July 1, 2011~~ *January 1, 2013*, the county treasurer shall use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify that the vehicle owner has complied with the requirements of 61-6-301. ~~Unless the verification system is temporarily unavailable, the county treasurer may not issue license plates to a motor vehicle when compliance with 61-6-301 cannot be verified.~~"

Section 2. Section 61-3-312, MCA, is amended to read:

"61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle's registration period following the expiration of the motor vehicle's registration.

(2) Except as provided in subsection (4), a person may renew a motor vehicle's registration by submitting full payment for the fees or taxes required under 61-3-303 and 61-3-321(12) to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer may use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify proof of compliance with 61-6-301.

(4) Beginning ~~July 1, 2011~~ *January 1, 2013*, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system.

(5) Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

(6) The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle's registration period and ~~if, beginning July 1, 2011,~~ the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in 61-6-157.

(7) The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

Section 3. Section 61-6-105, MCA, is amended to read:

"61-6-105. Department to administer law and make rules. (1) The department shall administer and enforce the provisions of this part and may make rules necessary for the administration of the system.

(2) The rules must:

(a) establish standards and procedures for accessing the system by authorized personnel of the department, the courts, law enforcement personnel, and any other entities authorized by the department that are consistent with specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) determine a schedule for the implementation of the system, subject to the testing requirements in 61-6-157 and the time requirements in 61-3-303 and 61-3-312;

~~(b)~~*(c)* provide for the suspension of a vehicle's registration when:

(i) a person fails to respond to a written inquiry from the department or its designee concerning the insurance status of a vehicle;

(ii) a person misrepresents or provides false information to the department or its designee regarding the operational status or use of a vehicle for which liability insurance is mandatory;

(iii) the department has reason to believe that a vehicle owner is not complying with the mandatory liability insurance requirements of 61-6-301; or

(iv) the department receives a report from a court that a person has been convicted of a violation of 61-6-301 or 61-6-302 and the surrender of the vehicle registration receipt and license plates under 61-6-304 has been ordered;

~~(c)~~*(d)* prohibit the reinstatement of a vehicle's registration and the new registration of a vehicle unless the applicable reinstatement fees have been paid;

~~(d)~~*(e)* set a fee for the reinstatement of a vehicle's registration following a suspension imposed by the department. The fee may not exceed $100 and is in addition to any other fine or penalty prescribed by the law.

~~(e)~~*(f)* provide for periodic insurance data file transfers from insurers under specifications and standards set forth in 61-6-157 to identify vehicles that are not covered by an insurance policy and to monitor ongoing compliance with mandatory vehicle liability insurance requirements;

~~(f)~~*(g)* provide for random checks to identify vehicles that are not covered by an insurance policy; and

~~(g)~~*(h)* provide for a hearing for a person aggrieved by a suspension order issued by the department under the provisions of this part.

(3) The department may adopt additional rules to:

(a) assist authorized users in interpreting responses received from the system and determining the appropriate action to be taken as a result of a response; and

(b) otherwise clarify system operations and business rules."

Section 4. Section 61-6-157, MCA, is amended to read:

"61-6-157. Creation of online motor vehicle liability insurance verification system. (1) The department, in cooperation with the commissioner of insurance, shall establish an accessible common carrier-based motor vehicle insurance verification system to verify the compliance of a motor vehicle owner or operator with motor vehicle liability policy requirements under

61-6-103, 61-6-301, and 61-6-302 and facilitate or monitor proof of financial responsibility filings under 61-6-133 and 61-6-134.

(2) The department may contract with a private vendor or vendors to establish and maintain the system.

(3) The system must:

(a) send requests to insurers for verification of motor vehicle liability insurance using electronic services established by the insurers, through the internet, world wide web, or a similar proprietary or common carrier electronic system in compliance with the specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) include appropriate provisions to secure its data against unauthorized access and to maintain a record of all requests and responses;

(c) be accessible, without fee, to authorized personnel of the department, the courts, law enforcement personnel, county treasurers, and authorized agents under the provisions of 61-3-116;

(d) interface, wherever possible, with existing department and law enforcement systems;

(e) receive insurance data file transfers from insurers under specifications and standards set forth in subsection (3)(a) to identify vehicles that are not covered by an insurance policy;

(f) provide a means by which low-volume insurers that are unable to deploy an online interface with the system can report insurance policy data to the department or its designee for inclusion in the system;

(g) provide a means to track separately or distinguish motor vehicles that are subject to a certificate of self-insurance under 61-6-143, a surety or indemnity bond under 61-6-137 or 61-6-301, or a deposit of cash or securities under 61-6-138;

(h) be available 24 hours a day, 7 days a week, subject to reasonable allowances for scheduled maintenance or temporary system failures, to verify the insurance status of any vehicle in a manner prescribed by the department; and

(i) be ~~installed and operational no later than July 1, 2011, following~~ *used only for information-gathering and educational purposes until the completion of* an appropriate testing period of not less than 6 months.

(4) The provisions of Title 2, chapter 6, parts 1 and 2, do not apply to the information contained in the verification system.

(5) Every insurer shall cooperate with the department in establishing and maintaining the system and shall provide access to motor vehicle liability policy status information to verify liability coverage:

(a) for a vehicle insured by that company that is registered in this state; and

(b) if available, for a vehicle that is insured by that company or that is operated in this state and that is the subject of an accident investigation regardless of where the vehicle is registered."

Section 5. Section 61-6-302, MCA, is amended to read:

"61-6-302. Proof of compliance. (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) Each owner or operator of a motor vehicle shall carry in the motor vehicle an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. If the card is issued under a commercial automobile insurance policy or a self-insured fleet, the card must indicate the status as "commercially insured" or "fleet". A motor vehicle owner or operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection.

~~(3) Beginning July 1, 2011, a person charged with violating subsection (2) may not be convicted if:~~

~~(a) the arresting officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system a request that provides proof of insurance valid at the time of arrest; or~~

~~(b) if the system under 61-6-157 is not available, the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest.~~

~~(4)~~*(3)* In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the complaint and notice to appear on the owner of the vehicle:

(a) personally; or

(b) by certified mail, return receipt requested, at the address for the owner listed on the registration receipt for the vehicle or, following query through available law enforcement systems, at the address maintained for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both.

(4) An owner or operator charged with violating subsection (2) may not be convicted if:

(a) the arresting officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system, when implemented, a request that provides proof of insurance valid at the time of arrest; or

(b) if the system under 61-6-157 is not available, the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2011

CHAPTER NO. 74

[HB 399]

AN ACT ALLOWING FOR THE TRANSFER OF A CERTIFICATE OF TITLE TO AN INSURANCE COMPANY WITH ELECTRONIC SIGNATURES; AMENDING SECTION 61-3-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-205, MCA, is amended to read:

"61-3-205. Transfer of ownership of vehicles by insurance company. (1) *(a)* ~~When~~ *Except as provided in subsection (2),* an insurance company or its adjuster *that* has taken possession of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile as a result of settling an insurance claim and *that* transfers ownership of the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile~~, it~~ shall deliver to the transferee at the time of transfer a certificate of title signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, or a notary public.

~~(2)~~*(b)* If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.

(2) (a) The registered owner or owners may use an electronic signature pursuant to Title 30, chapter 18, part 1, on the certificate of title or on a limited power of attorney to assign ownership of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile. The department may prescribe the form of the limited power of attorney to be used for this purpose. A certificate of title transferred with an electronic signature does not require acknowledgment by the county treasurer, a deputy county treasurer, or a notary public. A power of attorney executed under authority of this subsection (2)(a) does not require notarization.

(b) A secured party may release a perfected security interest in a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile under this section by electronic signature pursuant to Title 30, chapter 18, part 1."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2011

CHAPTER NO. 75

[HB 419]

AN ACT GENERALLY REVISING CAPTIVE INSURANCE COMPANY LAW; REVISING DEFINITIONS; REVISING MINIMUM CAPITAL SURPLUS REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR THE OPERATION OF CAPTIVE INSURANCE COMPANIES AND FOR INTERACTION BETWEEN CAPTIVE INSURANCE COMPANIES AND THEIR PROTECTED CELLS; REVISING QUALIFICATION FOR PROTECTED CELL SPONSORS AND PARTICIPANTS; AND AMENDING SECTIONS 33-28-101, 33-28-102, 33-28-104, 33-28-107, 33-28-202, 33-28-301, 33-28-302, AND 33-28-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-28-101, MCA, is amended to read:

"33-28-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member by virtue of common ownership, control, operation, or management.

(2) "Association" means any legal association of sole proprietorships or business entities that has been in continuous existence for at least 1 year unless the 1-year requirement is waived by the commissioner and the members of which collectively, or the association itself:

(a) owns, controls, or holds with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;

(b) has complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(c) constitutes all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(3) "Association captive insurance company" means any company that insures risks of the members and the affiliated companies of members.

(4) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(5) "Branch captive insurance company" means any foreign captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(6) "Branch operations" means any business operations of a branch captive insurance company in this state.

(7) (a) "Business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership, or other legal entity formed by an organizational document.

(b) The term does not include a sole proprietor.

(8) "Captive insurance company" means any pure captive insurance company, association captive insurance company, protected cell captive insurance company, *incorporated cell captive insurance company, special purpose captive insurance company,* or industrial insured captive insurance company formed or licensed under the provisions of this chapter.

(9) "Captive reinsurance company" means a captive insurance company licensed in this state that reinsures the risk ceded by any other insurer.

(10) "Captive risk retention group" means a captive insurance risk retention group formed under the laws of this chapter and pursuant to Title 33, chapter 11.

(11) "Cash equivalent" means any short-term, highly liquid investment that is:

(a) readily convertible to known amounts of cash; and

(b) so near to its maturity that it presents insignificant risk of changes in value because of changes in interest rates. Only an investment with an original maturity of 3 months or less qualifies as a cash equivalent.

(12) (a) "Controlled unaffiliated business entity" means a business entity or sole proprietorship:

(i) that is not in a parent's corporate system consisting of the parent and affiliated companies;

(ii) that has an existing, controlling contractual relationship with the parent or an affiliated company; and

(iii) whose risks are managed by a pure captive insurance company.

(b) The commissioner may promulgate rules that further define a controlled unaffiliated business entity.

(13) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance that is in excess of a specified per-incident or aggregate limit established by the commissioner.

(14) "Foreign captive insurance company" means any captive insurance company formed under the laws of any jurisdiction other than this state.

(15) "Incorporated cell" means a protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company.

(16) "Incorporated cell captive insurance company" means a protected cell captive insurance company that is established as a corporate or other legal entity separate from its incorporated cell that is organized as a separate legal entity.

~~(15)~~*(17)* "Industrial insured" means an insured:

(a) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least $25,000; and

(c) who has at least 25 full-time employees.

~~(16)~~*(18)* "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

~~(17)~~*(19)* "Industrial insured group" means any group that meets either of the following:

(a) the group collectively:

(i) owns, controls, or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(ii) has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) the group is a captive risk retention group.

~~(18)~~*(20)* "Member" means a sole proprietorship or business entity that belongs to an association.

~~(19)~~*(21)* "Mutual insurer" means a business entity without capital stock and with a governing body elected by the policyholders.

~~(20)~~*(22)* "Organizational document" means articles of incorporation, articles of organization, a partnership agreement, a subscribers' agreement, a charter, or any other document that establishes a business entity.

~~(21)~~*(23)* "Parent" means a sole proprietorship, business entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a captive insurance company.

~~(22)~~*(24)* "Participant" means a sole proprietorship or business entity and any affiliates that are insured by a protected cell captive insurance company in which the losses of the participant are limited through a participant contract to the participant's ~~pro rata~~ share of the assets of one or more protected cells identified in the participant contract.

~~(23)~~*(25)* "Participant contract" means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each participant in the contract.

~~(24)~~*(26)* "Protected cell" means a separate account established by a protected cell captive insurance company formed or licensed under the provisions of this chapter, in which ~~assets are maintained for one or more participants~~ *an identified pool of assets and liabilities are segregated and insulated, as provided in this chapter, from the remainder of the protected cell captive insurance company's assets and liabilities* in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts.

(27) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.

~~(25)~~*(28)* "Protected cell captive insurance company" means any captive insurance company:

(a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors;

(b) that is formed or licensed under the provisions of this chapter;

(c) that insures the risks of separate participants through participant contracts; and

(d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.

(29) "Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell captive insurance company.

~~(26)~~*(30)* "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies and controlled unaffiliated business entities.

~~(27)~~*(31)* "Sole proprietorship" means an individual doing business in a noncorporate form.

(32) "Special purpose captive insurance company" means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.

~~(28)~~*(33)* "Sponsor" means any entity that meets the requirements of 33-28-301 and 33-28-302 and is approved by the commissioner to provide all or part of the capital and surplus required by the applicable law and to organize and operate a protected cell captive insurance company."

Section 2. Section 33-28-102, MCA, is amended to read:

"33-28-102. Licensing — authority. (1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a license to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies and controlled unaffiliated business entities;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the members or affiliated companies of members;

(d) a special purpose captive insurance company may not provide insurance or reinsurance for risks unless approved by the commissioner;

~~(d)~~*(e)* a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203;

(iii) provide health insurance coverage or a group health plan unless the captive insurance company or branch captive insurance company is only providing health insurance coverage or a group health plan for the parent company and its affiliated companies; or

(iv) write workers' compensation insurance on a direct basis; and

~~(e)~~*(f)* a protected cell captive insurance company may not insure any risks other than those of its participant affiliated companies and controlled unaffiliated business entities.

(2) A captive insurance company may not write any insurance business unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) (i) it appoints a registered agent to accept service of process;

(ii) the name and contact information and any subsequent changes regarding the registered agent are filed with the commissioner; and

(iii) it agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a business entity:

(A) file with the commissioner a certified copy of its organizational documents, a statement under oath of an officer of the business entity showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require;

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement

under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) In the event of any subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a protected cell captive insurance company shall file with the commissioner the following:

(i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;

(ii) a statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(iii) all contracts or sample contracts between the protected cell captive insurance company and any participants; and

(iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or

administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of $300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The license is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."

Section 3. Section 33-28-104, MCA, is amended to read:

"33-28-104. Minimum capital surplus — letter of credit. (1) A captive insurance company may not be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

(a) in the case of a pure captive insurance company, not less than $250,000;

(b) in the case of an industrial insured captive insurance company, not less than $500,000;

(c) in the case of an association captive insurance company, not less than ~~$750,000~~ *$500,000*; ~~or~~

(d) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro forma documents, including the nature of the risks to be insured;

~~(d)~~*(e)* in the case of a protected cell captive insurance company, not less than $500,000. However, if the protected cell captive insurance company does not assume any risks, the risks insured by the protected cells are homogenous, and if there are not more than 10 cells, the commissioner may reduce the amount required in this subsection ~~(1)(d)~~ *(1)(e)* to an amount not less than $250,000.

~~(e)~~*(f)* in the case of a branch captive insurance company, not less than the applicable amount of capital and surplus required in subsections (1)(a) through ~~(1)(d)~~ *(1)(e)*, as determined based upon the organizational form of the foreign captive insurance company. The minimum capital and surplus must be jointly held by the commissioner and the branch captive insurance company in a bank of the federal reserve system approved by the commissioner.

~~(f)~~*(g)* in the case of a captive reinsurance company, not less than 50% of the capital that would be required for that type of captive insurance company.

(2) The commissioner may require additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by the state of Montana or a member bank of the federal reserve system and approved by the commissioner."

Section 4. Section 33-28-107, MCA, is amended to read:

"33-28-107. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) Except as provided in subsection (2)(b), on or before ~~March~~ *April* 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers. *On or before March 1 of each year, a captive risk retention group shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner and verified by oath by two of its executive officers.*

(b) A pure captive insurance company, branch captive insurance company, or industrial insured captive company, excluding captive risk retention groups, may make written application for filing the required report on a fiscal yearend basis. If an alternative reporting date is granted:

(i) the required report is due ~~60~~ *90* days after fiscal yearend; and

(ii) in order to provide sufficient information to support the premium tax return, a pure captive insurance company or industrial insured insurance company shall file a report acceptable to the commissioner prior to ~~March~~ *April* 1 of each year for the prior calendar yearend.

(c) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

(d) On or before ~~March~~ *April* 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

(3) The commissioner shall consider financial statements filed pursuant to this section as confidential.

(4) (a) Captive risk retention groups shall file reports and statements in accordance with Title 33, chapter 2, part 7, except that a captive risk retention group may file using generally accepted accounting principles. The filing may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner.

(b) The commissioner may waive the RBC report required in 33-2-1903 for a captive risk retention group that files a report or statement pursuant to

subsection (4)(a) or for a captive risk retention group that was formed in the last 2 years.

(c) The filings in subsection (4)(a) are required on an annual and quarterly basis."

Section 5. Section 33-28-202, MCA, is amended to read:

"33-28-202. Legal investments. (1) (a) An industrial insured captive insurance company, an association captive insurance company, and a captive risk retention group shall comply with the investment requirements contained in Title 33, chapter 12, and the rules promulgated in accordance with these provisions.

(b) The commissioner may approve the use of alternative reliable methods of valuation and rating.

(c) When a captive insurance company's admitted assets total less than $5 million, the commissioner may approve an investment of up to 20% of admitted assets in rated credit instruments in any one investment that meets the requirements of 33-12-303(1)(c).

(2) A pure captive insurance company *or protected cell captive insurance company* is not subject to any restrictions on allowable investments, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates. Loans to a parent company or any affiliate may not be made without prior written approval of the commissioner and must be evidenced by a note in a form approved by the commissioner. Loans of minimum capital and surplus funds required by 33-28-104 are prohibited."

Section 6. Section 33-28-301, MCA, is amended to read:

"33-28-301. Protected cell captive insurance company. (1) One or more sponsors may form a protected cell captive insurance company*, which may be incorporated or unincorporated*.

(2) A protected cell captive insurance company formed or licensed under the provisions of this chapter ~~may establish and maintain one or more protected cells to insure risks of one or more participants,~~ *is* subject to the following ~~conditions~~:

~~(a) The shareholders of the protected cell captive insurance company must be limited to its participants and sponsors.~~

(a) (i) A protected cell captive insurance company may establish one or more protected cells with the prior written approval of the commissioner of a plan of operation or amendments submitted by the protected cell captive insurance company with respect to each protected cell.

(ii) Upon the written approval of the commissioner of the plan of operation, which must include but is not limited to the specific business objectives and investment guidelines of the protected cell, the protected cell captive insurance company in accordance with the approved plan of operation may attribute to the protected cell insurance obligations with respect to its insurance business.

(iii) A protected cell must have its own distinct name or designation that must include the words "protected cell" or "incorporated cell".

(iv) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that

protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(v) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner. Each incorporated protected cell of a protected cell captive insurance company must be treated as a captive insurance company for purposes of this chapter, except for the application of 33-28-201. Unless otherwise permitted by the articles of incorporation or other organizational document of a protected cell captive insurance company, each incorporated protected cell of the protected cell captive insurance company must have the same directors, secretary, and registered office as the protected cell captive insurance company.

(b) All attributions of assets and liabilities between a protected cell and the protected cell captive insurance company's general account must be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets and liabilities may be made by a protected cell captive insurance company between the protected cell captive insurance company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell must be in cash or in readily marketable securities with established market values.

(c) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the protected cell, and the protected cell captive insurance company may not be a trustee or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account. A protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and is otherwise allowed under applicable law.

(d) This chapter may not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment adviser, commodity trading adviser, or other third party to manage the protected cell assets of a protected cell if all remuneration, expenses, and other compensation of the third party are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(e) (i) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(A) separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account; and

(B) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(ii) If the provisions of this subsection (2)(e) are violated, the remedy of tracing is applicable to protected cell assets commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance

company's general account. The remedy of tracing may not be construed as an exclusive remedy.

(f) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets with a value at least equal to the reserves attributed to that protected cell.

~~(b)~~*(3)* Each protected cell must be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and result of operations of the protected cell, including but not limited to the net income or loss, dividends or other distributions to participants, and any other factor provided in the participant contract or required by the commissioner.

~~(c)~~*(4)* The assets of a protected cell may not be chargeable with liabilities arising from any other insurance business of the protected cell captive insurance company.

~~(d)~~*(5)* A sale, exchange, or other transfer of assets may not be made by a protected cell captive insurance company among any of its protected cells without the consent of the participants of each affected protected cell.

~~(e)~~*(6)* A sale, exchange, transfer of assets, dividend, or distribution may not be made from a protected cell to a sponsor or a participant without the commissioner's prior written approval, which may not be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to the protected cell.

~~(f)~~*(7)* Each protected cell captive insurance company shall file annually with the commissioner any financial reports required by the commissioner and shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

~~(g)~~*(8)* Each protected cell captive insurance company shall notify the commissioner in writing within 20 business days from the time that a protected cell has become impaired or insolvent or is otherwise unable to meets its claim or expense obligations.

~~(h)~~*(9)* A participant contract may not take effect without the commissioner's prior written approval.

~~(i)~~*(10)* An addition of each new protected cell or the withdrawal of any participant of an existing protected cell constitutes a change in the business plan of the protected cell captive insurance company and may not be effective without the commissioner's prior written approval.

~~(j)~~*(11)* The business written by a protected cell captive insurance company, with respect to each cell, must be:

~~(i)~~*(a)* fronted by an insurance company licensed under the laws of any state;

~~(ii)~~*(b)* reinsured by a reinsurer authorized or approved by the commissioner; or

~~(iii)~~*(c)* secured by a trust fund in the United States for the benefit of policyholders and claimants, which must be funded by an irrevocable letter of credit or other asset that is acceptable to the commissioner, and with the following requirements:

~~(A)~~*(i)* the amount of the security provided by the trust fund may not be less than the reserves associated with the liabilities that are not fronted or reinsured, including but not limited to reserves for losses that are allocated for loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell;

~~(B)~~*(ii)* the commissioner may require the protected cell captive insurance company to increase the funding of any trust;

~~(C)~~*(iii)* if the form of security in the trust is a letter of credit, the letter of credit must be established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner; and

~~(D)~~*(iv)* the trust and trust instrument must be in a form and with terms approved by the commissioner."

Section 7. Section 33-28-302, MCA, is amended to read:

"33-28-302. Qualification of sponsors. A sponsor of a protected cell captive insurance company must be an insurer licensed under the laws of any state, a reinsurer licensed under the laws of any state, a captive insurance company formed or licensed under this chapter, ~~or~~ an insurance producer licensed under chapter 17 of this title and approved by the commissioner*, or any other person approved by the commissioner*."

Section 8. Section 33-28-304, MCA, is amended to read:

"33-28-304. Participants in protected cell captive insurance companies. (1) ~~A~~ *An individual or* business entity may be a participant in a protected cell captive insurance company.

(2) A sponsor may be a participant in a protected cell captive insurance company.

(3) A participant is not required to be a shareholder of a protected cell captive insurance company or its affiliate.

~~(4) A participant shall insure only its own risks through a protected cell captive insurance company.~~"

Approved March 25, 2011

CHAPTER NO. 76

[SB 19]

AN ACT PROVIDING FOR THE FILING OF AN AFFIDAVIT OF DEATH FOR THE PURPOSES OF NONPROBATE TRANSFERS OF REAL PROPERTY; AND AMENDING SECTION 72-6-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-6-121, MCA, is amended to read:

"72-6-121. Beneficiary deed — form — definitions. (1) A deed that conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner transfers the deceased owner's interest to the grantee beneficiary designated by name in the beneficiary deed effective on the death of the owner, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime.

(2) A beneficiary deed may designate multiple grantees who take title as joint tenants with right of survivorship, tenants in common, or any other tenancy that is valid under the laws of this state.

(3) A beneficiary deed may designate a successor grantee beneficiary. If the beneficiary deed designates a successor grantee beneficiary, the deed must state

the condition on which the interest of the successor grantee beneficiary would vest.

(4) If real property is owned by persons as joint tenants with the right of survivorship, a deed that conveys an interest in the real property to a grantee beneficiary designated by all of the ~~then surviving~~ *then-surviving* owners and that expressly states that the deed is effective on the death of the last surviving owner transfers the interest to the designated grantee beneficiary effective on the death of the last surviving owner. If a beneficiary deed is executed by fewer than all of the owners of real property owned as joint tenants with right of survivorship, the beneficiary deed is valid if the last surviving owner is one of the persons who executes the beneficiary deed. If the last surviving owner did not execute the beneficiary deed, the transfer lapses and the deed is void. An estate in joint tenancy with right of survivorship is not affected by the execution of a beneficiary deed that is executed by fewer than all of the owners of the real property, and the rights of a surviving joint tenant with right of survivorship prevail over a grantee beneficiary named in a beneficiary deed. *A surviving person with an interest in real property subject to a beneficiary deed as provided in this section may execute an acknowledged statement that another person with an interest in the property is deceased. The statement must contain those matters specified in 7-4-2613(1)(c) and be recorded with the clerk and recorder in each county in which the real property or any part of the real property is located.*

(5) A beneficiary deed is valid only if the deed is executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the property is located, before the death of the owner or the last surviving owner. A beneficiary deed may be used to transfer an interest in real property to the trustee of a trust even if the trust is revocable.

(6) A beneficiary deed may be revoked at any time by the owner or, if there is more than one owner, by any of the owners who executed the beneficiary deed. To be effective, the revocation must be executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the real property is located, before the death of the owner who executes the revocation. If the real property is owned as joint tenants with right of survivorship and if the revocation is not executed by all the owners, the revocation is not effective unless executed by the last surviving owner.

(7) If an individual who is a recipient of medicaid pursuant to 53-6-131 conveys an interest in real property by means of a beneficiary deed, the department of public health and human services may assert a claim pursuant to 53-6-167 against the property that is the subject of a beneficiary deed to the extent of medical assistance granted by the department.

(8) If an owner executes and records more than one beneficiary deed concerning the same real property, the last beneficiary deed that is recorded before the owner's death is the effective beneficiary deed.

(9) This section does not prohibit other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

(10) The signature, consent, or agreement of, or notice to, a grantee beneficiary of a beneficiary deed is not required for any purpose during the lifetime of the owner.

(11) A beneficiary deed that is executed, acknowledged, and recorded in accordance with this section is not revoked by the provisions of a will.

(12) The death of an owner of real property must, for the purposes of this section, be proved by ~~affidavit or certificate of death~~ *an acknowledged statement that a person with an interest in the property is deceased. The statement must contain the matters specified in 7-4-2613(1)(c) and be recorded with the clerk and recorder in each county in which the real property or any part of the real property is located*.

(13) A beneficiary deed is sufficient if it complies with other applicable law and if it is in substantially the following form:

Beneficiary Deed

I (we) ..... (owner) hereby convey to ..... (grantee beneficiary) effective on my (our) death the following described real property:

(Legal description)

If a grantee beneficiary predeceases the owner, the conveyance to that grantee beneficiary must either (choose one):

[ ] Become void.

[ ] Become part of the estate of the grantee beneficiary.

.....

(Dated)

.....

(Signature of grantor(s))

(acknowledgment)

(14) An instrument revoking a beneficiary deed is sufficient if it complies with other applicable laws and is in substantially the following form:

Revocation of Beneficiary Deed

The undersigned hereby revokes the beneficiary deed recorded on ..... (date), in docket or book ..... at page ....., or instrument number ....., records of ..... County, Montana, concerning the following described real property:

(Legal description)

Dated: .....

.....

Signature

(acknowledgment)

(15) As used in this section, the following definitions apply:

(a) "Beneficiary deed" means a deed authorized by this section.

(b) "Grantee beneficiary" or "grantee" means the person to whom an owner grants an interest in the real property that is the subject of the beneficiary deed.

(c) "Owner" means a person who executes a beneficiary deed as provided in this section."

Approved March 25, 2011

CHAPTER NO. 77

[SB 203]

AN ACT ALLOWING THE SALE AND FURNISHING OF BEER BY ON-PREMISES RETAILERS IN GROWLERS FOR OFF-PREMISES CONSUMPTION; AMENDING SECTIONS 16-1-106 AND 16-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:

(i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

(ii) that contains at least 0.5% of alcohol by volume;

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

(i) that contains at least 0.5% of alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

(v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

(vi) that is not exempt pursuant to 27 CFR 25.55(f).

(9) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(10) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(11) "Growler" means any refillable, resealable container complying with federal law.

~~(11)~~*(12)* "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

~~(12)~~*(13)* "Immediate family" means a spouse, dependent children, or dependent parents.

~~(13)~~*(14)* "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(14)~~*(15)* "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated or stimulant-enhanced malt beverage.

~~(15)~~*(16)* "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

~~(16)~~*(17)* "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(17)~~*(18)* "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code. In the case of sacramental wine, the wholesale price may not exceed the sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.

~~(18)~~*(19)* "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~(19)~~*(20)* "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

~~(20)~~*(21)* "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

~~(21)~~*(22)* "Rules" means rules adopted by the department or the department of justice pursuant to this code.

~~(22)~~*(23)* "Sacramental wine" means wine that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

~~(23)~~*(24)* "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

~~(24)~~*(25)* "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(25)~~*(26)* "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(26)~~*(27)* "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(27)~~*(28)* "Table wine" means wine that contains not more than 16% of alcohol by volume and includes cider.

~~(28)~~*(29)* "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(29)~~*(30)* "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(30)~~*(31)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-3-303, MCA, is amended to read:

"16-3-303. Sale of beer by retailer for consumption off premises. It ~~shall be~~ *is* lawful for ~~such~~ *an on-premises* retailer to sell or furnish beer to the public *in its original package or in growlers* ~~with intent that such~~ *and the* beer

~~shall~~ *must* be taken away from the premises of ~~such~~ *the* retailer for consumption off the premises of ~~such~~ *the* retailer. *Growlers may not be filled in advance of sale and may be furnished by the consumer.*"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 25, 2011

CHAPTER NO. 78

[SB 211]

AN ACT REVISING THE SALVAGE MOTOR VEHICLE TITLE LAW BY CHANGING A VEHICLE AGE RESTRICTION; AND AMENDING SECTION 61-3-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-211, MCA, is amended to read:

"61-3-211. Surrender of certificate of title — issuance of salvage certificate — salvage retitling requirements. (1) An insurer acquiring ownership of a motor vehicle ~~that is less than 5 years of age and~~ *that is less than 15 years of age and* that the insurer determines to be a salvage vehicle shall surrender the certificate of title to the department within 15 days after acquiring the certificate of title. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of title, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of title names one or more holders of a perfected security interest in the motor vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of title and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of title, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of title to the department. Upon receipt of the certificate of title from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of title in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of title or a comparable ownership document.

(5) At the time of surrender of a certificate of title for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of $5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 61-3-225."

Approved March 25, 2011

CHAPTER NO. 79

[SB 256]

AN ACT REVISING LAWS RELATING TO REAL ESTATE BROKERS AND SALESPERSONS TO CLARIFY THE RIGHTS AND OBLIGATIONS OF A SUPERVISING BROKER; AND AMENDING SECTIONS 37-51-302, 37-51-305, 37-51-308, 37-51-309, AND 37-51-602, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker's or salesperson's license — qualifications of applicant — supervising broker endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of ~~the~~ *a* licensed broker *with a supervising broker endorsement* by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

(6) (a) An applicant for a supervising broker endorsement must meet the education and experience requirements established by the board by rule except that:

~~(i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement provided that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention to obtain the endorsement;~~

~~(ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed salespersons;~~

~~(iii)~~ continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.

(b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement.

(c) The board may adopt rules allowing a salesperson to temporarily associate with a broker with a supervising broker endorsement other than the supervising broker listed on the salesperson's pocket card."

Section 2. Section 37-51-305, MCA, is amended to read:

"37-51-305. License — delivery — display — pocket card. (1) A license must bear the seal of the board.

(2) The license of a real estate salesperson must be delivered or mailed to the ~~real estate~~ *salesperson's supervising* broker ~~with whom the real estate salesperson is associated~~ and must be kept in the custody and control of the *supervising* broker.

(3) A broker shall display the broker's own license conspicuously in the broker's place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesperson, stating the period for which fees have

been paid and, on *a* real estate salesperson's cards only, the name and address of the *salesperson's supervising* broker ~~with whom the real estate salesperson is associated~~."

Section 3. Section 37-51-308, MCA, is amended to read:

"37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and*, if the broker is a supervising broker,* the original license of each salesperson associated or under contract with the broker ~~shall~~ *must* be prominently displayed in the office. The address of the office and any branch office ~~shall~~ *must* be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days ~~thereafter~~ *of removal*, designating the new location of this office and paying the required fee~~, whereupon~~. *After receipt of the information required under this subsection, the department shall issue* a license for the new location ~~must be issued~~ for the unexpired period."

Section 4. Section 37-51-309, MCA, is amended to read:

"37-51-309. Broker — salesperson — personal transactions of salesperson — notice to department of change of association. (1) A salesperson may not be associated with or under contract to more than one ~~licensed~~ *supervising* broker or perform services for a broker *with a supervising broker endorsement* other than the one designated on the license issued to the salesperson *except on a temporary basis as provided in 37-51-302*.

(2) When a licensed salesperson desires to change association or contractual relationship from one ~~licensed~~ *supervising* broker to another, the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return the salesperson's license, and a new license and pocket card must be issued. A salesperson may not directly or indirectly work for or with a *supervising* broker until the salesperson has been issued a license to work for or with that *supervising* broker. On termination of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's *supervising* broker, who shall return it to the department for cancellation.

(3) Only one license may be issued to a salesperson to be in effect at one time.

(4) (a) The provisions of this chapter do not prohibit a salesperson from engaging in personal transactions, and the provisions of this chapter do not require a *supervising* broker to exercise any supervision or provide any training for a salesperson with respect to personal transactions of the salesperson.

(b) A *supervising* broker is not responsible or liable for the personal transactions of a salesperson~~.~~ *if:*

(i) the personal transaction does not involve the salesperson's supervising broker or real estate firm; and

~~(c)~~*(ii)* ~~Prior~~ *prior* to entering into a personal transaction, ~~a~~ *the* salesperson ~~shall disclose~~ *discloses* in writing to the other party that the transaction is a personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's *supervising* broker or real estate firm.

(5) For the purposes of this part, "personal transaction" includes the following:

(a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

(b) the leasing or renting of real property owned by the salesperson."

Section 5. Section 37-51-602, MCA, is amended to read:

"37-51-602. Definition of property management — exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

(a) a relative of the owner of the real estate, defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or

(ix) the spouse of the property owner;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

(f) an officer of the state or any of its political subdivisions in the conduct of official duties;

(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;

(h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

(j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under ~~the supervision of a real estate~~ *a supervising* broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesperson and without holding a separate property manager's license."

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 25, 2011

CHAPTER NO. 80

[SB 258]

AN ACT REVISING TOW TRUCK LAWS; REVISING THE DEFINITION OF "COMMERCIAL TOW TRUCK"; AND AMENDING SECTIONS 61-8-904 AND 61-9-416, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-904, MCA, is amended to read:

"61-8-904. Prohibition — exception. (1) A commercial tow truck operator may not operate for compensation upon the public roadways of this state unless the operator complies with the provisions of 61-8-906(1) and 61-8-907.

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 unless the operator complies with the provisions of this part.

(3) ~~Sections~~ *Except as provided in 61-9-416, the provisions of* 61-8-901 through 61-8-908 and 61-8-910 do not apply to a commercial tow truck operator that does not operate for compensation."

Section 2. Section 61-9-416, MCA, is amended to read:

"61-9-416. Commercial tow truck definition — requirements. (1) "Commercial tow truck" means a motor vehicle operating for compensation that is equipped with specialized equipment designed and intended for towing or the recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public roadways. *If a tow truck owner or operator's business profits or benefits in any way from towing a vehicle, the tow truck must be considered a commercial tow truck for the purposes of Title 61, chapter 8, and this chapter.*

(2) A commercial tow truck must be equipped with:

(a) not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must be of a type approved by the department.

(b) at least two highway warning signs as provided in 61-9-431.

(c) a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department;

(d) a lamp emitting a flashing red or amber light meeting the requirements of 61-9-402(7), or both a red and amber light, mounted on top of the cab of the tow truck or on the top of the crane or hoist if the light can be seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions and must be mounted so that it can be securely fastened with the lens of the lamp facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in a position considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must be turned to the rear of the tow truck upon which it is mounted and securely locked in this position. Additional red or amber lights of an approved type may be displayed at either side or both sides of the tow truck during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle that is to be towed;

(f) a shovel, and whenever practical, the tow truck operator engaged to remove a disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle; and

(g) a portable electrical extension cord or other device for use in displaying stop, turn, and taillamps on the rear of the disabled vehicle. The length of the extension cord may not be less than the length of the combined vehicles. When a disabled vehicle is towed, the tow truck operator shall provide for the rear light that is capable of displaying a stop signal, turn signal, and taillamps by means of the extension cord or other device referred to in this subsection.

~~(2)~~*(3)* The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of a portion of the roadway, place a highway warning sign as required in 61-9-431.

~~(3)~~*(4)* The owner or operator of a commercial tow truck who complies with the requirements of 61-8-906 and 61-8-907 and this section may stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code.

~~(4)~~*(5)* A commercial tow truck company that is in compliance with 61-9-431 and that is operating an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of 61-9-402(5)."

Approved March 25, 2011

CHAPTER NO. 81

[SB 289]

AN ACT INCREASING THE AMOUNT OF LIQUOR DISTILLED AT A MICRODISTILLERY THAT MAY BE SOLD TO A CUSTOMER FOR OFF-PREMISES CONSUMPTION; AND AMENDING SECTION 16-4-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-312, MCA, is amended to read:

"16-4-312. Domestic distillery. (1) A distillery located in Montana and licensed pursuant to 16-4-311 may:

(a) import necessary products in bulk;

(b) bottle, produce, blend, store, transport, or export liquor that it produces;

(c) perform those operations that are permitted for bonded distillery premises under applicable regulations of the United States department of the treasury.

(2) (a) A distillery that is located in Montana and licensed pursuant to 16-4-311 shall sell liquor to the department under this code, and the department shall include the distillery's liquor as a listed product.

(b) The distillery may use a common carrier for delivery of the liquor to the department.

(c) A distillery that produces liquor within the state under this subsection (2) shall maintain records of all sales and shipments. The distillery shall furnish monthly and other reports concerning quantities and prices of liquor that it ships to the department and other information that the department may determine to be necessary to ensure that distribution of liquor within this state conforms to the requirements of this code.

(3) A microdistillery may:

(a) provide, with or without charge, not more than 2 ounces of liquor that it produces at the microdistillery to consumers for consumption on the premises between 10 a.m. and 8 p.m. A microdistillery may not sell or give more than 2 ounces of liquor to an individual for on-premises consumption during a business day.

(b) sell liquor that it produces at retail at the distillery directly to the consumer for off-premises consumption if:

(i) not more than ~~1 liter~~ *1.75 liters* a day is sold to an individual; and

(ii) the minimum retail price as determined by the department is charged."

Approved March 25, 2011

CHAPTER NO. 82

[SB 335]

AN ACT REDUCING THE AMOUNT OF TIME DURING WHICH THE DEPARTMENT OF ADMINISTRATION MAY REPLACE A STALE-DATED WARRANT; REDUCING THE LENGTH OF TIME THAT A STALE-DATED WARRANT MUST BE RETAINED IN THE PRIVATE PURPOSE TRUST FUND; AMENDING SECTION 17-8-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-8-303, MCA, is amended to read:

"17-8-303. Warrants — presentation and cancellation. (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state treasury must be presented for payment within 6 months after the date of issue.

(b) Warrants issued for the department of public health and human services that are funded to any extent with federal money must be presented for payment within 180 days after the date of issue.

(2) If the payee or legal holder of any warrant fails to present it for payment within the time specified in subsection (1), the state treasurer shall record the warrant as stale-dated and the amount must be credited to a separate private purpose trust fund account administered by the treasurer. If the payee or legal owner of a stale-dated warrant presents it for payment or presents a claim for payment within ~~4 years~~ *1 year* from the date of issue, the state treasurer may, upon proper showing by affidavit, issue a new warrant in lieu of the stale-dated warrant.

(3) ~~Three years and 6~~ *Six* months after being stale-dated, the warrant must be classed as unclaimed property subject to the provisions of Title 70, chapter 9, part 8. If the payee or legal owner of a stale-dated warrant presents it for payment or presents a claim for payment, the presentation must be to the department of revenue as provided in 70-9-815."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved March 25, 2011

CHAPTER NO. 83

[HB 28]

AN ACT REQUIRING THAT PROPOSED DRAINFIELD MIXING ZONES BE LOCATED WHOLLY WITHIN THE SUBDIVISION WHERE THE DRAINFIELD IS LOCATED OR ON AN ADJOINING RIGHT-OF-WAY; ALLOWING LOCATION OF A DRAINFIELD MIXING ZONE OUTSIDE THE SUBDIVISION IF AN EASEMENT OR OTHER AUTHORIZATION IS OBTAINED; AMENDING SECTION 76-4-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

(a) size of lots;

(b) contour of land;

(c) porosity of soil;

(d) ground water level;

(e) distance from lakes, streams, and wells;

(f) type and construction of private water and sewage facilities; and

(g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater

systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone is located wholly within the boundaries of the proposed subdivision where the drainfield is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone outside the boundaries of the proposed subdivision where the drainfield is located. A mixing zone may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b).

~~(i)~~*(j)* criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through ~~(6)(h)~~ *(6)(i)*;

~~(j)~~*(k)* evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat; and

~~(k)~~*(l)* evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than 50 days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than 60 days after the submission of a complete application, as provided in 76-4-125.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to subdivision applications received on or after [the effective date of this act].

Approved March 30, 2011

CHAPTER NO. 84

[HB 37]

AN ACT MODIFYING VEGETATIVE COVER OF WATER FACILITY STANDARDS FOR FINAL BOND RELEASE AT COAL AND URANIUM MINES; ELIMINATING THE CONTINGENT VOIDNESS SECTION RELATED TO FEDERAL APPROVAL OF MODIFICATIONS TO THE VEGETATIVE COVER STANDARDS; AMENDING SECTION 82-4-235, MCA; REPEALING SECTION 2, CHAPTER 72, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-235, MCA, is amended to read:

"82-4-235. ~~(Temporary)~~ Determination of successful revegetation — final bond release. (1) Success of revegetation must be judged on the

effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). Except as provided in subsection (3), the remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is not subject to the 10-year responsibility period. Water management facilities and other support facilities include ~~but are not limited to~~ sedimentation ponds, diversions, other water management structures, soils stockpiles, *and* access roads~~, segments of haul roads, and electrical substations~~.

(b) Vegetative cover of water management facilities and other support facilities composing no more than 10% of the area for which bond release is sought is eligible for bond release if the vegetative cover otherwise meets the reclamation standards in subsection (1).

(4) (a) Notwithstanding the provisions of subsections (2) and (3), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection

with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (4)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2). ~~(Void on occurrence of contingency—sec. 2, Ch. 72, L. 2009.)~~

82-4-235. (Effective on occurrence of contingency) Determination of successful revegetation — final bond release. ~~(1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:~~

~~(a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture publications applicable to the area of the operation, as referenced in rules adopted by the board;~~

~~(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;~~

~~(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;~~

~~(d) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;~~

~~(e) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and~~

~~(f) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.~~

~~(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.~~

~~(3) (a) Notwithstanding the provision in subsection (2), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, pursuant to a permit issued by the department under this part, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:~~

~~(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and~~

~~(ii) at least one of the following conditions exists:~~

~~(A) the standards of 82-4-233(1) are otherwise achieved;~~

~~(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;~~

~~(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or~~

~~(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.~~

~~(b) On lands that meet the criteria described in subsection (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2).~~"

Section 2. Repealer. Section 2, Chapter 72, Laws of 2009, is repealed.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2011

CHAPTER NO. 85

[HB 52]

AN ACT PROVIDING RULEMAKING AUTHORITY TO THE BOARD OF ENVIRONMENTAL REVIEW TO REGULATE RECLAIMED WASTEWATER FROM PUBLIC SEWAGE SYSTEMS; DEFINING "RECLAIMED WASTEWATER"; AUTHORIZING THE ADOPTION OF TREATMENT STANDARDS AND MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS; AND AMENDING SECTIONS 75-6-102 AND 75-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Certified source water protection area" means an area certified by the department that identifies the surface and subsurface area surrounding a source of water for a public water supply system through which contaminants may move toward and reach the source of supply.

(3) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial waste, or other waste creating a hazard to human health.

(5) "Cross-connection" means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Drainage" means rainfall, surface, and subsoil water.

(8) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

(9) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

(10) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(11) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

(12) (a) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(13) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

(14) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water

bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

(15) "Reclaimed wastewater" means wastewater that is treated by a public sewage system for reuse for private, public, or commercial purposes.

~~(15)~~*(16)* "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

~~(16)~~*(17)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

~~(17)~~*(18)* "Source water protection program" means a program administered by the department to certify source water protection delineation and assessment reports and source water protection plans and to review source water protection ordinances.

~~(18)~~*(19)* "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

~~(19)~~*(20)* "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year."

Section 2. Section 75-6-103, MCA, is amended to read:

"75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system, including requirements to remedy:

(i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(ii) fecal contamination in water used by a public water supply system; or

(iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; ~~and~~

(k) *(i) allowable uses of reclaimed wastewater and classification of those uses;*

(ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater and any receiving water;

(iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection (2)(k)(ii); and

(iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of natural resources and conservation; and

(l) any other requirement necessary for the protection of public health as described in this part.

(3) Board rules must provide for the following:

(a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b), but not constructed within the 36-month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The board may issue orders necessary to fully implement the provisions of this part."

Approved March 30, 2011

CHAPTER NO. 86

[HB 63]

AN ACT RELATING TO LIQUOR LICENSE ADMINISTRATION; PERMITTING CERTAIN OUT-OF-STATE RESIDENTS TO PROTEST LIQUOR LICENSE APPLICATIONS FROM ADJOINING MONTANA COUNTIES; REMOVING THE PROVISION THAT LIQUOR LICENSE APPLICATION PROTESTS MAY BE MADE BASED SOLELY ON CREDITOR STATUS; ALLOWING NONPROFIT AND TAX-EXEMPT ORGANIZATIONS TO AUCTION OR RAFFLE ALCOHOLIC BEVERAGES FOR FUNDRAISING PURPOSES; AMENDING SECTION 16-4-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application — investigation — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. When the application is complete, the department of justice shall investigate the application as provided in 16-4-402. When the department determines that an application for a license under this code is complete, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by ~~a person who has extended credit to the transferor or by~~ residents of the county from which the application comes, ~~or~~ *residents of* adjoining Montana counties*, or residents of adjoining counties in another state if the criteria in subsection (4)(d) are met*. Protests ~~may~~ *must* be mailed to ~~a named administrator in~~ the department within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the ..... day of ....., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). ~~A person who has extended credit to the transferor and residents~~ *Residents* of ..... counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to ....., department of revenue, Helena, Montana, on or before the ..... day of ....., 20.....

Dated .....

Signed

.....

~~ADMINISTRATOR~~

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) (a) If the ~~administrator~~ *department* receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses.

(d) A resident of a county in another state that adjoins the county in Montana from which an application comes may protest an application only if the county or state of residence of the person has certified to the department that a similarly situated Montana resident would be able to make formal protest of a liquor license application in that state or county. The department may, by rule, establish how the certification is to be made."

Section 2. Fundraising events for nonprofit and tax-exempt organizations. (1) A nonprofit organization governed under Title 35, chapter 2, or an organization designated as tax-exempt under the provisions of section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended, may raffle or auction alcoholic beverages at fundraising events. Any alcoholic beverage

raffled or auctioned must be given by the organization to the raffle or auction winner sealed in its original package.

(2) If the fundraising event is held on the premises of a business licensed under this code or on premises for which a permit has been issued under this code, the alcoholic beverage may not be consumed on the premises. An alcoholic beverage that is on a licensee's premises solely for a fundraising event under this section does not constitute a violation by the licensee of 16-3-301(1) or 16-6-303.

(3) A nonprofit or tax-exempt organization may hold no more than four events per calendar year at which alcoholic beverages are raffled or auctioned. The duration of each event must be announced at the time any raffle tickets are sold or auction bids are received. Raffles and auctions held pursuant to this section must be to directly support bona fide charitable, nonprofit, or tax-exempt activities.

(4) An alcoholic beverage for raffle or auction must be:

(a) acquired, whether by purchase or donation, by the organization from a retailer licensed under the provisions of this code, excluding a restaurant beer and wine licensee;

(b) purchased by the organization from an agency liquor store at not less than the posted price; or

(c) received by the organization as a donation at no cost to the organization from any other person except one licensed as a wholesaler or distributor under this code.

(5) No proceeds from the raffle or auction of alcoholic beverages may go to anyone who provided the alcoholic beverages to the organization for the raffle or auction.

(6) For a raffle or auction described in subsection (1), raffle tickets may not be sold to, and auction bids may not be solicited or received from, any person under 21 years of age. The organization raffling or auctioning alcoholic beverages may not sell, deliver, or give away any alcoholic beverage to a person under 21 years of age or to any person actually, apparently, or obviously intoxicated.

(7) As used in this section:

(a) "auction" means the sale of an item or items, which may include alcoholic beverages, whereby the item for sale is sold to the highest bidder at the bid price. An auctioned item or items may have a reserve price.

(b) "raffle" means an event in which a nonprofit or tax-exempt organization sells tickets and each ticket gives the purchaser of the ticket the chance to win a prize, which may include alcoholic beverages, with the winner determined by a random drawing.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 16, chapter 3, part 3, and the provisions of Title 16, chapter 3, part 3, apply to [section 2].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2011

CHAPTER NO. 87

[HB 126]

AN ACT CLARIFYING THAT THE SENTENCING AUTHORITY OF THE DISTRICT COURT INCLUDES THE AUTHORITY TO SENTENCE A YOUTH FOR ANY OTHER OFFENSE THAT ARISES DURING THE COMMISSION OF AN OFFENSE FOR WHICH THE DISTRICT COURT MAY ALREADY SENTENCE; AND AMENDING SECTION 41-5-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) sexual assault as provided in 45-5-502(3);

(v) assault with a weapon as defined in 45-5-213;

(vi) robbery as defined in 45-5-401;

(vii) burglary or aggravated burglary as defined in 45-6-204;

(viii) aggravated kidnapping as defined in 45-5-303;

(ix) possession of explosives as defined in 45-8-335;

(x) criminal distribution of dangerous drugs as defined in 45-9-101;

(xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

(xii) criminal possession with intent to distribute as defined in 45-9-103(1);

(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership as defined in 45-8-403;

(xv) escape as defined in 45-7-306;

(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1) *and any offense that arose during the commission of a crime enumerated in subsection (1)*, the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. *If a youth is acquitted in district court of all offenses enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which the youth is found guilty.* A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth

is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 30, 2011

CHAPTER NO. 88

[HB 181]

AN ACT ALLOWING A CONDOMINIUM UNIT TO BE COUNTED INDIVIDUALLY FOR PURPOSES OF A MUNICIPAL ZONING PROTEST; AMENDING SECTION 76-2-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-305, MCA, is amended to read:

"76-2-305. Alteration of zoning regulations — protest. (1) A regulation, restriction, and boundary may be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice apply equally to all changes or amendments.

(2) An amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city or town council or legislative body of the municipality if a protest against a change pursuant to subsection (1) is signed by the owners of 25% or more of:

(a) the area of the lots included in any proposed change; or

(b) those lots *or units, as defined in 70-23-102,* 150 feet from a lot included in a proposed change.

(3) (a) For purposes of subsection (2), each unit owner is entitled to have the percentage of the unit owner's undivided interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located.

(b) The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change pursuant to subsection (2) or by the presiding officer of the association of unit owners."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2011

CHAPTER NO. 89

[HB 255]

AN ACT DESIGNATING MARCH 30 AS WELCOME HOME VIETNAM VETERANS DAY FOR THE STATE OF MONTANA.

WHEREAS, the United States became involved in a war in the former Republic of South Vietnam to stop the spread of communism to that country; and

WHEREAS, by 1969, a peak of approximately 543,000 members of the armed forces of the United States were serving in the former South Vietnam; and

WHEREAS, more than 58,000 members of the armed forces lost their lives in Vietnam and more than 300,000 members were wounded; and

WHEREAS, by March 30, 1973, combat and combat support units had left Vietnam; and

WHEREAS, the Vietnam War was an extremely divisive issue among the people of the United States and caused a generation of veterans to be criticized for participation in a war that was the official policy of four presidential administrations in the United States government, a policy that Vietnam veterans themselves could not control; and

WHEREAS, the establishment of a Welcome Home Vietnam Veterans Day would provide an appreciation that Vietnam veterans deserve for their service but did not receive at the time of their homecoming; and

WHEREAS, establishment of a Welcome Home Vietnam Veterans Day would also promote awareness of the faithful service of Vietnam veterans, promote awareness of their contributions to the country, and recognize the assistance that veterans of the war in Vietnam are providing to the returning veterans of the wars in Iraq and Afghanistan in recovering from their wounds, both seen and unseen, and in supporting the reintegration of these new veterans back into civilian life.

Be it enacted by the Legislature of the State of Montana:

Section 1. Welcome home Vietnam veterans day. There is established a welcome home Vietnam veterans day for the state of Montana. The welcome home Vietnam veterans day is March 30 of each year and commemorates the day in 1973 when all combat units and combat support units arrived home from the former South Vietnam.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 2, and the provisions of Title 1, chapter 1, part 2, apply to [section 1].

Approved March 30, 2011

CHAPTER NO. 90

[HB 426]

AN ACT REQUIRING WRITTEN CONSENT OF PROPERTY OWNERS FOR CERTAIN KINDS OF LAND TO BE INCLUDED IN A PROPOSED NEW CITY OR TOWN; AND AMENDING SECTION 7-2-4101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4101, MCA, is amended to read:

"7-2-4101. Petition to organize city or town. (1) Whenever the inhabitants of any part of a county desire to organize as a city or town, the inhabitants may apply by petition, signed by not less than 300 registered electors or two-thirds of the registered electors, whichever is less, who are residents of the state and residing within the limits of the proposed city or town,

to the board of county commissioners of the county in which the proposed area is situated.

(2) (a) The petition must describe the limits of the proposed city or town and wards of the proposed city or town. A proposed ward must contain 50 or more registered electors and must have at least 200 inhabitants for each square mile of land area.

(b) The proposed city or town must contain a post office within the proposed area of the city or town.

(c) Land used for production agriculture in tracts larger than 160 acres and land and facilities used for electric power generation, refining, or smelting may not be included in a proposed city or town without the written consent of the owners of the land.

~~(c)~~*(d)* The petitioners shall attach to the petition a map of the proposed area to be incorporated and state the name of the proposed city or town.

(3) The petition and map must be filed in the office of the election administrator."

Approved March 30, 2011

CHAPTER NO. 91

[SB 32]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LEGISLATIVE INTERIM COMMITTEES; PROVIDING THAT THE STATE COMPENSATION INSURANCE FUND AND BOARD BE INCLUDED UNDER THE ECONOMIC AFFAIRS INTERIM COMMITTEE; PROVIDING THAT THE OFFICE OF STATE PUBLIC DEFENDER BE INCLUDED UNDER THE LAW AND JUSTICE INTERIM COMMITTEE; AMENDING SECTIONS 5-5-223, 5-5-226, AND 5-5-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-223, MCA, is amended to read:

"5-5-223. Economic affairs interim committee. The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

(1) department of agriculture;

(2) department of commerce;

(3) department of labor and industry;

(4) department of livestock;

(5) office of the state auditor and insurance commissioner; ~~and~~

(6) office of economic development*; and*

(7) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019."

Section 2. Section 5-5-226, MCA, is amended to read:

"5-5-226. Law and justice interim committee. The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for *the office of state public*

defender, the department of corrections*,* and the department of justice and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary."

Section 3. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and*, unless otherwise assigned by law,* the entities attached to the agencies for administrative purposes:

(a) department of administration*, except:*

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019; and

(ii) the office of state public defender;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles;

(d) solicit and review proposed statutory changes to any of the state's public employee retirement systems;

(e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:

(i) a summary of the fiscal implications of the proposal;

(ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

(iii) an analysis of the soundness of the proposal as a matter of public policy;

(iv) any amendments proposed by the committee; and

(v) the committee's recommendation on whether the proposal should be enacted by the legislature.

(f) attach the committee's report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and

(g) publish, for legislators' use, information on the state's public employee retirement systems.

(3) The committee may:

(a) specify the date by which proposals affecting a retirement system must be submitted to the committee for the review contemplated under subsection (2)(d); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2011

CHAPTER NO. 92

[SB 34]

AN ACT REVISING THE LAWS RELATING TO LEGISLATIVE INTERIM COMMITTEES; PROVIDING THAT THE LEGISLATIVE COUNCIL MAY ASSIGN AN ENTITY THAT IS ADMINISTRATIVELY ATTACHED TO AN AGENCY TO A DIFFERENT INTERIM COMMITTEE UPON PETITION; PROVIDING THAT APPOINTING AUTHORITIES ATTEMPT TO APPOINT TO EACH INTERIM COMMITTEE A MEMBER OF THE JOINT SUBCOMMITTEE CONSIDERING RELATED AGENCY BUDGETS; AMENDING SECTIONS 5-5-202 AND 5-5-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-202, MCA, is amended to read:

"5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, water policy committee, and state-tribal relations committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

(a) economic affairs committee;

(b) education and local government committee;

(c) children, families, health, and human services committee;

(d) law and justice committee;

(e) energy and telecommunications committee;

(f) revenue and transportation committee; and

(g) state administration and veterans' affairs committee.

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee. *If there is an entity that is attached to an agency for administrative purposes under the jurisdiction of an interim committee and another interim committee has a justification to seek jurisdiction and petitions the legislative council, the legislative council may assign that entity to the interim committee seeking jurisdiction unless otherwise provided by law.*"

Section 2. Section 5-5-211, MCA, is amended to read:

"5-5-211. Appointment and composition of interim committees. (1) Senate interim committee members must be appointed by the committee on committees.

(2) House interim committee members must be appointed by the speaker of the house.

(3) Appointments to interim committees must be made by the time of adjournment of the legislative session.

(4) A legislator may not serve on more than two interim committees unless no other legislator is available or is willing to serve.

(5) (a) Subject to 5-5-234 and subsection (5)(b) of this section, the composition of each interim committee must be as follows:

(i) four members of the house, two from the majority party and two from the minority party; and

(ii) four members of the senate, two from the majority party and two from the minority party.

(b) If the committee workload requires, the legislative council may request the appointing authority to appoint one or two additional interim committee members from the majority party and the minority party.

(6) The membership of the interim committees must be provided for by legislative rules. The rules must identify the committees from which members are selected, and the appointing authority shall attempt to select not less than 50% of the members from the standing committees that consider issues within the jurisdiction of the interim committee *and at least one member from the joint subcommittee that considers the related agency budgets*. In making the appointments, the appointing authority shall take into account term limits of members so that committee members will be available to follow through on committee activities and recommendations in the next legislative session.

(7) An interim committee or the environmental quality council may create subcommittees. Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to a subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2011

CHAPTER NO. 93

[SB 38]

AN ACT REVISING LAWS RELATED TO STATE TRUST LAND INTEREST AND INCOME REVENUE; DEFINING "STATE TRUST LAND"; AMENDING SECTIONS 20-9-342 AND 77-1-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-342, MCA, is amended to read:

"20-9-342. Deposit of interest and income money by state board of land commissioners. Except as provided in 20-9-516, the state board of land

commissioners shall ~~annually~~ deposit the interest and income money for each ~~calendar~~ *fiscal* year into the guarantee account, provided for in 20-9-622, for state equalization aid by the last business day of February *and June* ~~following the calendar~~ *before the close of the fiscal* year in which the money was received."

Section 2. Section 77-1-101, MCA, is amended to read:

"77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Distributable revenue" applies to all land trusts managed by the board, except property held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, and includes:

(a) 95% of all revenue from the management of school trust lands and the common school permanent fund, *except for mineral royalties or land sale proceeds that are deposited directly in the permanent fund*;

(b) ~~95% of~~ the interest and income described in 20-9-341, less any unrealized gains or losses;

(c) the *interest and* income received from the leasing, licensing, or other use of state trust lands; and

(d) subject to 17-3-1003, the proceeds and income from the sale of timber from capitol building land grant and university system lands.

(5) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) The term does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(6) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

(7) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(a) as a statewide noxious weed by rule of the department of agriculture; or

(b) as a district noxious weed by a district weed board organized under 7-22-2103.

(8) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or

(iv) lands acquired through investments under the provisions of 17-6-201.

(9) "State trust land" means lands or property interests held in trust by the state:

(a) under Article X, sections 2 and 11, of the Montana constitution;

(b) through The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended; and

(c) through the operation of law for specified trust beneficiaries.

~~(9)~~*(10)* "Weed management" or "control" has the meaning provided in 7-22-2101."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved March 30, 2011

CHAPTER NO. 94

[SB 47]

AN ACT CLARIFYING THE POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW RELATED TO AIR QUALITY PERMITTING AND RULEMAKING FOR FORESTRY EQUIPMENT; AMENDING SECTION 75-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage

of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; ~~or~~

(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; *or*

(c) forestry equipment and its associated engine used for forestry practices that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2011

CHAPTER NO. 95

[SB 67]

AN ACT REQUIRING THE OFFICE OF COURT ADMINISTRATOR TO TRANSFER $25,000 TO THE GENERAL FUND IN LIEU OF CONDUCTING AN EVALUATION OF SELECTED JUVENILE OUT-OF-HOME PLACEMENTS, PROGRAMS, AND SERVICES FOR FISCAL YEARS 2011 AND 2012; AMENDING SECTION 41-5-2003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-2003, MCA, is amended to read:

"41-5-2003. Establishment of program — department duties — office of court administrator duties. (1) There is a juvenile delinquency intervention program. Each judicial district shall participate in the program.

(2) The department and the judicial district shall monitor the judicial district's annual allocation provided for in 41-5-130 to ensure that the judicial district does not exceed its allocation.

(3) The department shall provide technical assistance to each judicial district for the monitoring of its annual allocation.

(4) The office of court administrator shall assist each youth court in developing placement alternatives and community intervention and prevention programs and services.

(5) (a) ~~Each~~ *Except as provided in subsection (6), each* fiscal year, the office of court administrator shall select out-of-home placements, programs, and services to be evaluated for their effectiveness in achieving the purposes provided in 41-5-2002. The cost containment review panel shall provide

recommendations to the office on out-of-home placements, programs, and services to be evaluated and on the scope of the evaluation. Before conducting any evaluation, the office shall obtain approval from the district court council established in 3-1-1602.

(b) The office shall report the results of any evaluation conducted under subsection (5)(a) each year to the department, cost containment review panel, district court council, and law and justice interim committee.

(6) On or before June 30 in fiscal years 2011 and 2012, the office of court administrator shall transfer $25,000 in each fiscal year from the youth court intervention and prevention account to the general fund in lieu of conducting the evaluation required by subsection (5) for fiscal years 2011 and 2012."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2011

CHAPTER NO. 96

[SB 103]

AN ACT EXEMPTING FROM PERMITTING THE DEVELOPMENT OF GROUND WATER WELLS AND SPRINGS FOR USE IN CERTAIN HEATING OR COOLING APPLICATIONS; AND AMENDING SECTION 85-2-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) *(i) Except as provided in subsection (3)(a)(ii), outside* ~~Outside~~ the boundaries of a controlled ground water area, a permit is not required before

appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(ii) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 350 gallons a minute or less for use in nonconsumptive geothermal heating or cooling exchange applications if all of the water extracted is returned without delay to the same source aquifer and if the distance between the extraction well and both the nearest existing well and the hydraulically connected surface waters is more than twice the distance between the extraction well and the injection well.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Approved March 30, 2011

CHAPTER NO. 97

[SB 128]

AN ACT EXEMPTING FROM PERMITTING GROUND WATER APPROPRIATIONS BY LOCAL GOVERNMENTAL FIRE AGENCIES FOR FIRE PROTECTION USE; AND AMENDING SECTION 85-2-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) (a) Except as provided in subsection (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works.

(b) If another person has rights in the ground water development works, water may be appropriated with the written consent of the person with those property rights or, if the ground water development works are on national forest system lands, with any prior written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the certificate.

(c) If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's

intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of a rule promulgated pursuant to 85-2-506.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring*:*

(i) with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit*; or*

(ii) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification or a written federal special use authorization as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

(b) the appropriation is less than 30 acre-feet a year;

(c) the appropriation is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a stock water provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(b) If the impoundment or pit is on national forest system lands, an application is not correct and complete under this section until the applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Approved March 30, 2011

CHAPTER NO. 98

[SB 342]

AN ACT DEFINING "MISCONDUCT" WITH RESPECT TO UNEMPLOYMENT INSURANCE BENEFITS; AND AMENDING SECTION 39-51-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A subsequent benefit year may not be established in Montana until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the benefit year is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a

single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) (a) "Misconduct" includes but is not limited to the following conduct by an employee:

(i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer;

(ii) deliberate violations or disregard of standards of behavior that the employer has the right to expect of an employee;

(iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or a fellow employee; or

(iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or substantial disregard of the employer's interest.

(b) The term does not include:

(i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(ii) inadvertent or ordinary negligence in isolated instances; or

(iii) good faith errors in judgment or discretion.

~~(19)~~*(20)* "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

~~(20)~~*(21)* "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

~~(21)~~*(22)* "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(22)~~*(23)* "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

~~(23)~~*(24)* "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

~~(24)~~*(25)* (a) "Wages", unless specifically exempted under subsection ~~(24)(b)~~ *(25)(b)*, means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

~~(25)~~*(26)* "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(26)~~*(27)* "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Approved March 30, 2011

CHAPTER NO. 99

[HB 70]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE PUBLIC RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; PERMITTING THE BOARD TO APPOINT ITS OWN ATTORNEY TO REVIEW PROPOSED BOARD RULES; CLARIFYING DEFINITIONS REGARDING TERMINATION OF SERVICE TO SPECIFY THAT A MEMBER WITH AN AGREEMENT TO RETURN TO WORK IS NOT ELIGIBLE TO RETIRE; CLARIFYING LIABILITY FOR INCORRECT REPORTING OR ERRONEOUS PAYMENTS; CLARIFYING THE EFFECT OF OLD MEMBERSHIP CARDS ON RETURNING MEMBERS; CLARIFYING THAT A SERVICE PURCHASE MUST STOP OR BE COMPLETED PRIOR TO PAYMENT OF A DISABILITY BENEFIT; CLARIFYING THAT GUARANTEED ANNUAL BENEFIT ADJUSTMENT PAYMENTS ARE NOT PAID RETROACTIVELY; ADDRESSING BANKED HOLIDAY PAYMENTS; TREATING THE MONTANA SCHOOL FOR THE DEAF AND BLIND AS A SCHOOL DISTRICT FOR CALCULATION OF MEMBERSHIP SERVICE DURING OFFICIAL VACATION; CLARIFYING THE TREATMENT OF ADDITIONAL OR ONE-FOR-FIVE SERVICE PURCHASES; PROVIDING THAT RETIRED MEMBERS MUST BE TERMINATED FROM EMPLOYMENT FOR AT LEAST 90 DAYS PRIOR TO RETURNING TO SERVICE AS A WORKING RETIREE; CLARIFYING THE DEATH BENEFIT AVAILABLE TO A BENEFICIARY OF A MEMBER WHO WAS INACTIVE FOR LESS THAN 6 MONTHS AT THE TIME OF DEATH; CLARIFYING PAYMENT OF THE REMAINING OPTION 4 BENEFIT WHEN THE RETIREE AND ALL NAMED CONTINGENT ANNUITANTS DIE PRIOR TO THE END OF THE PERIOD CERTAIN; REDUCING THE ASSUMED RATE OF INTEREST; CLARIFYING THE BENEFIT AVAILABLE

TO GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM MEMBERS; ELIMINATING THE AD HOC BENEFIT INCREASE USED FOR PURCHASING POWER ADJUSTMENTS; AMENDING SECTIONS 2-4-110, 2-15-1009, 17-6-203, 19-2-303, 19-2-403, 19-2-506, 19-2-603, 19-2-706, 19-2-715, 19-2-801, 19-2-802, 19-2-908, 19-3-108, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-513, 19-3-901, 19-3-906, 19-3-1106, 19-3-1201, 19-3-1202, 19-3-1203, 19-3-1501, 19-3-2114, 19-3-2117, 19-5-701, 19-7-301, 19-7-302, 19-7-1001, 19-8-101, 19-8-601, 19-8-801, 19-8-1003, 19-13-301, AND 19-21-214, MCA; REPEALING SECTIONS 19-3-1606 AND 19-8-604, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-110, MCA, is amended to read:

"2-4-110. Departmental review of rule notices. (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the appropriate administrative rule review committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121 *unless otherwise excepted*, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the statement of reasonable necessity for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct;

(d) whether the intended action is contrary to the code section or sections implemented or to other law; and

(e) for a rule that initially implements legislation, whether the intended action is contrary to any comments submitted to the department by the primary sponsor of the legislation for the purposes of 2-4-302.

(3) The person appointed under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required by this section."

Section 2. Section 2-15-1009, MCA, is amended to read:

"2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of seven members appointed by the governor with the consent of the senate. The members are:

(a) three public employees who are active members of a public retirement system. Not more than one of these members may be an employee of the same

department and at least one of these members must, no later than July 1, 2003, be a member of the defined contribution plan created pursuant to Title 19, chapter 3, part 21.

(b) one retired public employee who is a member of the public employees' retirement system;

(c) two members at large; and

(d) one member who has experience in investment management, counseling, or financial planning or who has other similar experience.

(3) The term of office for each member is 5 years.

(4) *(a)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(b) The board shall hire necessary employees as provided in 19-2-404.

(c) Consistent with its constitutional mandate to administer the retirement plans as a fiduciary of system participants and their beneficiaries, the board shall appoint its own existing attorney in lieu of the person appointed by the department, as provided for in 2-4-110, to have sole responsibility for the legal review of each board rule proposal notice, adoption notice, or other notice related to administrative rulemaking.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124."

Section 3. Section 17-6-203, MCA, is amended to read:

"17-6-203. Separate investment funds. Separate investment funds must be maintained as follows:

(1) the permanent funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in Article X, sections 2 and 10, of the Montana constitution. The principal and any part of the principal of each fund constituting the Montana permanent fund type are subject to deposit at any time when due under the statutory provisions applicable to the fund and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system maintained by the state, including:

~~(a) the highway patrol officers' retirement system described in Title 19, chapter 6;~~

~~(b)~~*(a)* the public employees' retirement system described in Title 19, chapter 3;

(b) the judges' retirement system described in Title 19, chapter 5;

(c) the highway patrol officers' retirement system described in Title 19, chapter 6;

(d) the sheriffs' retirement system described in Title 19, chapter 7;

~~(c)~~*(e)* the game wardens' and peace officers' retirement system described in Title 19, chapter 8;

(f) the municipal police officers' retirement system described in Title 19, chapter 9;

(g) the firefighters' unified retirement system described in Title 19, chapter 13;

(h) the Volunteer Firefighters' Compensation Act under Title 19, chapter 17;

~~(d)~~*(i)* the teachers' retirement system described in Title 19, chapter 20; and

~~(e)~~*(j)* the workers' compensation program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) the fish and wildlife mitigation trust fund established by 87-1-611;

(5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution to be observed by the state of Montana. If a gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other gifts, donations, grants, legacies, bequests, devises, or contributions.

(6) a fund consisting of coal severance taxes allocated to the coal severance tax trust fund under Article IX, section 5, of the Montana constitution. The principal of the coal severance tax trust fund is permanent. If the legislature appropriates any part of the principal of the coal severance tax trust fund by a vote of three-fourths of the members of each house, the appropriation or investment may create a gain or loss in the principal.

(7) a Montana tobacco settlement trust fund established in accordance with Article XII, section 4, of the Montana constitution and Title 17, chapter 6, part 6; and

(8) additional investment funds that are expressly required by law or that the board of investments determines are necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

Section 4. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

~~(9)~~*(10)* "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

~~(10)~~*(11)* "Board" means the public employees' retirement board provided for in 2-15-1009.

~~(11)~~*(12)* "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

~~(12)~~*(13)* "Covered employment" means employment in a covered position.

~~(13)~~*(14)* "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

~~(14)~~*(15)* "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

~~(15)~~*(16)* "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

~~(16)~~*(17)* "Department" means the department of administration.

~~(17)~~*(18)* "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

~~(18)~~*(19)* "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

~~(19)~~*(20)* "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

~~(20)~~*(21)* "Distributee" means:

(a) a member;

(b) a member's surviving spouse;

(c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

~~(21)~~*(22)* "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

~~(22)~~*(23)* "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

~~(23)~~*(24)* "Eligible rollover distribution":

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

~~(24)~~*(25)* "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

~~(25)~~*(26)* "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

~~(26)~~*(27)* "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

~~(27)~~*(28)* "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

~~(28)~~*(29)* "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

~~(29)~~*(30)* "Internal Revenue Code" has the meaning provided in 15-30-2101.

~~(30)~~*(31)* "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

~~(31)~~*(32)* "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(32)~~*(33)* (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

~~(33)~~*(34)* "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

~~(34)~~*(35)* "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

~~(35)~~*(36)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

~~(36)~~*(37)* "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

~~(37)~~*(38)* "Regular contributions" means contributions required from members under a retirement plan.

~~(38)~~*(39)* "Regular interest" means interest at rates set from time to time by the board.

~~(39)~~*(40)* "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

~~(40)~~*(41)* "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

~~(41)~~*(42)* "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a

defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection ~~(9)(b)~~ *(10)(b)*.

~~(42)~~*(43)* "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

~~(43)~~*(44)* "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(44)~~*(45)* "Service" means employment of an employee in a position covered by a retirement system.

~~(45)~~*(46)* "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

~~(46)~~*(47)* "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

~~(47)~~*(48)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(48)~~*(49)* "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

~~(49)~~*(50)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

~~(50)~~*(51)* "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

~~(51)~~*(52)* "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days*;*

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

~~(b)~~*(c)* the member is no longer receiving compensation for covered employment; and

~~(e)~~*(d)* the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection ~~(51)~~ *(52)*, compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

~~(52)~~*(53)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(53)~~*(54)* "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

~~(54)~~*(55)* "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

~~(55)~~*(56)* "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

~~(56)~~*(57)* "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102."

Section 5. Section 19-2-403, MCA, is amended to read:

"19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) The board shall enter into memoranda of understanding with the teachers' retirement system to exchange retirement system-related confidential

information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

~~(8)~~*(9)* Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

~~(9)~~*(10)* The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

~~(10)~~*(11)* The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

~~(11)~~*(12)* In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

~~(12)~~*(13)* The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection ~~(11)~~ *(12)* or the contested case procedure of the Montana Administrative Procedure Act.

~~(13)~~*(14)* The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title."

Section 6. Section 19-2-506, MCA, is amended to read:

"19-2-506. Payment of contributions by employers — accompanying reports — penalty — *liability.* (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) (a) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer.

(b) The rules must specify the employee categories to be reported, the data required, the method of reporting, the reporting period, and the frequency of reports needed to meet the demands of the relevant retirement system or plan.

(c) The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.

(4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(5) The board is not responsible or liable for any incorrect reporting or erroneous payment of contributions by an employer.

~~(5)~~*(6)* The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials."

Section 7. Section 19-2-603, MCA, is amended to read:

"19-2-603. Reinstatement after withdrawal of contributions. ~~(1)~~ Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes a member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without previous membership service or service credit. The person may reinstate that membership service or service credit by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the membership service and service credit previously canceled must be reinstated.

~~(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in 19-2-801.~~"

Section 8. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service credit for active member involuntarily terminated from employment. (1) The provisions of subsection (3) apply to an employee of the state or university system if:

(a) the employee is an active member of the public employees'~~,~~ *defined benefit plan or the* game wardens' and peace officers', sheriffs', firefighters' unified, or highway patrol officers' retirement system;

(b) the employee has involuntarily terminated from employment because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a member who is a legislator,

the legislator is terminated from office in either one of the houses of the legislature because of term limits;

(c) the employee is eligible for service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives the rights and benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service credit purchased under this section is the total actuarial cost of purchasing the service credit based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, 19-8-904, or 19-13-405. The employer-paid portion must be calculated using the formula A x B x C when:

(a) A is equal to a maximum of 3 additional years of service credit that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service credit purchased.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service credit to be purchased and the contribution required from the employer under subsection (3). The member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) (a) A member who has received additional service credit under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in any retirement system forfeits the additional service credit. The employer's contribution to purchase that member's additional service credit, minus any retirement benefits already paid, must be credited to the employer.

(b) As used in subsection (6)(a), the term "same jurisdiction" means all agencies of the state, including the university system."

Section 9. Section 19-2-715, MCA, is amended to read:

"19-2-715. Purchase of Montana public service. (1) (a) An active member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system if the member has:

(i) received or is eligible to receive a refund of accumulated contributions; ~~or~~ *and*

(ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(d) If the member was formerly in the public employees' retirement system's defined contribution plan, the member shall pay the actuarial cost of the service credit in the member's current retirement system based on the system's most recent actuarial valuation and the annual compensation of the member. The member is eligible to transfer the vested portion of the member's defined contribution account to pay the balance due. Any nonvested portion of the defined contribution account is forfeited pursuant to 19-3-2117.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of previous employment for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation. For the purpose of this subsection (2)(a), a political subdivision of the state includes a school district.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes public service, subject to 19-2-403."

Section 10. Section 19-2-801, MCA, is amended to read:

"19-2-801. Designation of beneficiary. (1) ~~(a)~~ In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board.

(2) Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board.

(3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the board shall reference the membership card executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries nominated on that membership card continue until changed as provided in subsection (2) of this section.

(4) (a) Except as provided in ~~subsection (1)(b)~~ *subsections (4)(b) and (4)(c)*, the *beneficiary designation on the* most recent ~~beneficiary designation~~ *membership card* filed with the board is effective for all purposes *until the member retires*.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership card for temporary or secondary employment with another employer within the same Title 19 retirement system.

(c) When a member retires, the designated beneficiaries or contingent annuitants named on the retirement application become effective.

~~(2)~~*(5)* If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

~~(3)~~*(6)* A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

(7) A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501, 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of the member."

Section 11. Section 19-2-802, MCA, is amended to read:

"19-2-802. Effect of no designation *of beneficiary* or no surviving *statutory or* designated beneficiary. (1) If *a member or payment recipient fails to name a designated beneficiary or if* a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate, as either a designated beneficiary or as a beneficiary by default as provided in this subsection, would not be probated but for the amount due to the estate from the retirement system, all of the amount due to the estate must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

Section 12. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all

eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of employment or, if requested by the member in writing, on the first day of a later month.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) ~~The~~ *If a disabled member continues with a purchase of service or chooses to purchase service following termination of employment, the member's disability benefit may not commence until the service purchase is completed.*

(4) If a member begins receiving retirement benefits payments later than when the member is initially eligible, the guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 ~~may not be paid retroactively. The guaranteed annual benefit adjustment begins on~~ *does not commence until* January 1 of the year after *the year in which* the member ~~has received an amount equal to or greater than 12 months of disability~~ *begins to receive the member's retirement* benefit ~~payments~~ *payment. The guaranteed annual benefit adjustment may not be paid retroactively.*

~~(4)~~*(5)* Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

~~(5)~~*(6)* Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

~~(6)~~*(7)* With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 13. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services~~,~~ or for time during which the member is excused from work because of a holiday or because the member has

taken compensatory leave, sick leave, *banked holiday time,* annual leave, or a leave of absence~~,~~ before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, *banked holiday time,* or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) (a) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service~~,~~ except as otherwise provided in subsection (6)(b) or (6)(c).

(b) For a member who has attained 65 years of age but has not served at least 36 months, highest average compensation means total compensation earned divided by the number of months the member has served.

(c) For a vested member who does not have 36 consecutive months of membership service, highest average compensation means the highest total compensation earned during any 36 consecutive calendar months divided by 36.

(d) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, *banked holiday time,* and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 14. Section 19-3-319, MCA, is amended to read:

"19-3-319. State contributions for local government and school district employers. (1) The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation paid to all employees of local government entities and school districts on and after July 1, 1997, except those employees properly excluded from membership.

(2) (a) Subject to subsection (2)(b), in addition to the contribution required under subsection (1), the state shall contribute monthly from the general fund to the pension trust fund a sum equal to ~~the following percentage~~ *0.27%* of the compensation paid to all employees of school districts ~~on and after July 1, 2007,~~ except for those employees properly excluded from membership~~:~~

~~(i) beginning July 1, 2007, 0.135%; and~~

~~(ii) beginning July 1, 2009, 0.27%~~.

(b) The additional contribution under subsection (2)(a) terminates when the additional contribution under 19-3-316(3) terminates.

(3) The board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payments in this section are statutorily appropriated as provided in 17-7-502."

Section 15. Section 19-3-401, MCA, is amended to read:

"19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees ~~must~~ become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting ~~their~~ *the employer's* employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement plan.

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.

(4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

(a) returns to service within 30 days of termination of employment; or

(b) terminates one employment but remains employed in another position covered by the system.

(5) Time during which an employee of a school district*, the Montana school for the deaf and blind,* or a public institution of higher education is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits."

Section 16. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions from membership. The following persons may not become members of the retirement system and, except as provided in subsection (7), may not later purchase previous service under 19-3-505:

(1) inmates *or residents* of state institutions *or correctional institutions*;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);

(6) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(7) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505."

Section 17. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) Except as provided in 5-2-304 and subsection (2) of this section, the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments, including individuals appointed to fill the unexpired term of elected officials, who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 10 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) A member who is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 90 days of ~~being elected~~ *taking office*, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board:

(i) for an employee described in subsection (1)(d), within 90 days of the commencement of the employee's employment; and

(ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 90 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection (2), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee who declines membership for a position for which membership is optional may not later become a member while still employed with the same employer but in a different optional membership position.

(b) An elected official who declines membership for a position for which membership is optional may not later become a member if reelected to the same optional membership position.

(c) If, after ~~a break in service of~~ *termination from employment for* 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(d) If the ~~break in service~~ *termination from employment* is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership must become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 18. Section 19-3-513, MCA, is amended to read:

"19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement *or to bring a member to 25 years of membership service for the purposes of 19-3-902 or 19-3-904(2)*.

(4) ~~Once a member has at least 25 years of membership service, purchases~~ *Purchases* of one-for-five service will be used to adjust the early retirement reduction required in 19-3-906 *if applicable*."

Section 19. Section 19-3-901, MCA, is amended to read:

"19-3-901. Eligibility for service retirement. (1) A member who has attained ~~the age of~~ 60 *years of age* and has 5 years of membership service is eligible for service retirement. A member who has attained *at least* ~~age~~ 65 *years of age and is* ~~while~~ employed in a position covered by a public employees' retirement system is eligible for service retirement regardless of the member's years of membership service. A member who has 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) In each of the circumstances described in subsection (1), the member has attained normal retirement age."

Section 20. Section 19-3-906, MCA, is amended to read:

"19-3-906. Early retirement benefit. (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904.

(2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:

(a) by ~~1/2 of 1%~~ *0.5%* multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and

(b) by ~~3/10 of 1%~~ *0.3%* multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.

(3) The actuarial reduction provided for in this section must be adjusted for any one-for-five service purchased under 19-3-513 ~~once the member has at least 25 years of membership service~~."

Section 21. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exceptions. (1) A retired member under 65 years of age who *has been terminated from employment for at least 90 days and* is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 960 hours in that calendar year.

(2) A ~~retiree~~ *retired member who is* 65 years of age or older *but less than 70 1/2 years of age, who has been terminated from employment for at least 90 days, and* who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement ~~benefits~~ *benefit*, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who*, as a retired member,* declines optional membership as provided in 19-3-412.

(6) For the purposes of this section, "employment covered by the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102."

Section 22. Section 19-3-1201, MCA, is amended to read:

"19-3-1201. Eligibility for death payments. Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death payment to the designated beneficiary of any member who dies:

(1) while in service;

~~(2) within 6 months after the discontinuance of service but before retirement;~~

~~(3)~~*(2)* while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months;

~~(4)~~*(3)* while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit; or

~~(5)~~*(4)* while an inactive member."

Section 23. Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of death payment. (1) The amount of death payment to be made to the designated beneficiary of a deceased member is the sum of subsections (1)(a), (1)(b), and (1)(c) as follows:

(a) the member's accumulated contributions;

(b) subject to subsection (2), an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

(c) the accumulated regular interest on the amounts in subsections (1)(a) and (1)(b) to the first day of the month in which the payment is made.

(2) *(a) A beneficiary of a member who was inactive for less than 6 months at the time of death is eligible to receive the payment described in subsection (1)(b).*

(b) A beneficiary of ~~an inactive~~ *a* member *who was inactive for 6 or more months at the time of death* is not eligible to receive the payment described in subsection (1)(b)."

Section 24. Section 19-3-1203, MCA, is amended to read:

"19-3-1203. Election of optional death annuity. The designated beneficiary of a deceased member may elect, by filing a written application with the board, to have the death payment provided for in ~~19-3-1201~~ *19-3-1202* paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits."

Section 25. Section 19-3-1501, MCA, is amended to read:

"19-3-1501. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis*;*

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

(5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 26. Section 19-3-2114, MCA, is amended to read:

"19-3-2114. Amount available to transfer. (1) (a) For an employee who was an active member of the system on the day before the effective date of the defined contribution plan and who elects to transfer to the plan:

(i) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and

(ii) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus 8% compounded annual interest from the month that the contributions were received.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of membership service, the percentage of the employer contributions that may be transferred are as follows:

Years of membership service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus*:*

(a) 8% compounded annual interest from the *initial* month that the contributions were received *through the last month that the contributions were received prior to July 1, 2011; and*

(b) 7.75% compounded annual interest from July 1, 2011, forward.

(3) For an employee who was an inactive member of the defined benefit plan on the date that the defined contribution plan became effective and who after that date became an active member and elected to transfer to the defined contribution plan:

(a) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and

(b) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus*:*

(i) 8% compounded annual interest from the *initial* month that the contributions were received *through the last month that the contributions were received prior to July 1, 2011; and*

(ii) 7.75% compounded annual interest from July 1, 2011, forward."

Section 27. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member's retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141; and

(b) ~~on July 1, 2007, through June 30, 2009, 0.135% of compensation and~~ on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:

(i) to the administrative account used by the board to meet the expenses of the plan's startup loan~~,~~ until paid in full;

(ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

(iii) to the long-term disability plan trust fund to provide disability benefits to eligible members.

(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 28. Section 19-5-701, MCA, is amended to read:

"19-5-701. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis*;*

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an

equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(2) The member or designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 29. Section 19-7-301, MCA, is amended to read:

"19-7-301. Membership — inactive vested members — inactive nonvested members. (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs' retirement system.

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator shall become a member of the sheriffs' retirement system.

(b) An investigator who was a member of the public employees' retirement system on July 1, 1993, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(3) (a) Except as provided in subsection (3)(b), a detention officer shall become a member of the sheriffs' retirement system.

(b) A detention officer who was a member of the public employees' retirement system on July 1, 2005, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board before May 1, 2006.

(4) A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(5) A sheriff, ~~or~~ investigator*, or detention officer* who elects to become a member of the sheriffs' retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

(6) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(7) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 30. Section 19-7-302, MCA, is amended to read:

"19-7-302. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, a sheriff may not become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs.

(2) After July 1, 1993, an investigator is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to investigators, except as provided in 19-7-301.

(3) After July 1, 2005, a detention officer is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to detention officers, except as provided in 19-7-301.

(4) This chapter may not be construed to deny any sheriff, ~~or~~ investigator*, or detention officer* any benefits accrued under provisions of the public employees' retirement system prior to membership in this retirement system."

Section 31. Section 19-7-1001, MCA, is amended to read:

"19-7-1001. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the

actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant, as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis*;*

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have

the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 32. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, *banked holiday time,* or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, ~~and~~ annual leave, *and banked holiday time,* paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation designated or appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 33. Section 19-8-601, MCA, is amended to read:

"19-8-601. Time of retirement. *(1)* A member who has completed at least 20 years of membership service and reached ~~the age of~~ 50 years *of age* has attained normal retirement age and may retire with a service retirement benefit by filing a written application with the board.

(2) A vested member who terminated service before completing 20 years of membership service may begin receiving a service retirement benefit upon reaching 55 years of age and filing a written application with the board."

Section 34. Section 19-8-801, MCA, is amended to read:

"19-8-801. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (1)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis*;*

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, the election is void.

(5) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(6) A member who applies to revert under subsection (5) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option and name a new contingent annuitant.

(7) If the member selects an alternative under subsection (6)(b) or (6)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of the election.

(8) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 35. Section 19-8-1003, MCA, is amended to read:

"19-8-1003. Nonduty-related death of active member. If a member dies before reaching *normal* retirement age, the member's designated beneficiary may choose either a lump-sum refund of the member's accumulated contributions or the actuarial equivalent of the ~~early~~ *service* retirement benefit ~~as~~ provided *for* in ~~19-8-604~~ *19-8-601*."

Section 36. Section 19-13-301, MCA, is amended to read:

"19-13-301. Active membership — inactive vested member — inactive nonvested member. (1) ~~Except as provided in subsection (7), a~~ *A* full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer who elects to join the retirement system, as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing an irrevocable written election with the board within 90 days of becoming a part-paid firefighter.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date on which the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date on which the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

~~(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 45 years of age may elect to remain in the public employees' retirement system.~~

~~(b) A firefighter making an irrevocable election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 90 days of being hired into the position otherwise covered under the firefighters' unified retirement system.~~

~~(8) A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system~~

~~for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit.~~"

Section 37. Reemployment of retired member. A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit.

Section 38. Section 19-21-214, MCA, is amended to read:

"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), of the employer's contribution:

(a) an amount equal to:

(i) 4.49% of compensation must be allocated to the participant's program account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(iii) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b); and

(b) ~~on July 1, 2007, through June 30, 2009, 0.135% of compensation and~~ on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:

(i) to the administrative account used by the public employees' retirement board to meet the expenses of the defined contribution plan's startup loan, until paid in full; and

(ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability.

(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121."

Section 39. Repealer. The following sections of the Montana Code Annotated are repealed:

19-3-1606. Purchasing power adjustment.

19-8-604. Early retirement benefit.

Section 40. Codification instruction. [Section 37] is intended to be codified as an integral part of Title 19, chapter 13, and the provisions of Title 19, chapter 13, apply to [section 37].

Section 41. Effective date. [This act] is effective July 1, 2011.

Approved April 1, 2011

CHAPTER NO. 100

[HB 94]

AN ACT GENERALLY REVISING PROFESSIONS AND OCCUPATIONS LAW; REVISING LICENSE VERIFICATION REQUIREMENTS FOR OUT-OF-STATE APPLICANTS; PROVIDING THAT A SCREENING PANEL IS AN AGENCY FOR THE PURPOSE OF SUMMARY SUSPENSIONS; REVISING DEFINITIONS AND THE ADMINISTRATION OF ANESTHESIA PERTAINING TO DENTISTRY; ELIMINATING THE REFERENCE TO A STATE EXAMINATION WITH RESPECT TO PODIATRISTS; REVISING BARBER AND COSMETOLOGIST LAW REGARDING BOOTH RENTAL, INSTRUCTOR TRAINING, AND LICENSING; EXPANDING THE AUTHORITY OF THE BOARD OF OUTFITTERS TO APPROVE LICENSE SUCCESSORS; REVISING DUTIES OF THE BOARD OF OUTFITTERS AND ELIMINATING RESTRICTIONS ON THE BOARD'S HIRING OF INVESTIGATORS; REVISING REALTY LAWS PERTAINING TO EDUCATION AND LICENSING REQUIREMENTS; REVISING PRIVATE SECURITY LAW DEFINITIONS AND RULEMAKING; AMENDING PROFESSIONAL ENGINEERING AND LAND SURVEYOR LAWS WITH RESPECT TO OUT-OF-STATE APPLICANTS; EXPANDING RECIPROCITY WITH RESPECT TO CRANE OPERATORS; REPEALING THE REQUIREMENT THAT PHARMACIES POST CERTAIN PRESCRIPTION DRUG PRICES; AMENDING SECTIONS 37-1-304, 37-1-305, 37-1-307, 37-3-310, 37-4-101, 37-4-511, 37-6-302, 37-31-305, 37-31-309, 37-31-312, 37-47-202, 37-47-310, 37-47-351, 37-51-204, 37-51-308, 37-51-605, 37-60-101, 37-60-202, 37-60-303, 37-67-306, 37-67-312, 37-67-313, AND 50-76-113, MCA; AND REPEALING SECTION 37-7-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-304, MCA, is amended to read:

"37-1-304. Licensure of out-of-state applicants — reciprocity. (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may ~~not~~ be issued ~~until the board receives~~ *if the applicant affirms or states in the application that the applicant has requested* verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. *If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the license pending further action to discipline or revoke the license.*

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis."

Section 2. Section 37-1-305, MCA, is amended to read:

"37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may ~~not~~ be issued ~~until the board receives~~ *in the board's discretion if the applicant verifies or states in the application that the applicant has requested* verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. *If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the license pending further action to discipline or revoke the license.*

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license."

Section 3. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. *A screening panel is an agency for purposes of summary suspensions under 2-4-631.* A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without

complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 4. Section 37-3-310, MCA, is amended to read:

"37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in the application the person's correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting the person. A person licensed to practice medicine in this state shall keep the department advised at all times of the person's correct mailing address and of the person's correct name. If the person changes the person's address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department *electronically or* in writing of the old and new address or of the former name and new name. This information must be entered promptly by the department in the official records of the department."

Section 5. Section 37-4-101, MCA, is amended to read:

"37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1732.

~~(b) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of~~

~~unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.~~

(b) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(c) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(d) "General anesthesia" means a ~~state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:~~

~~(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and~~

~~(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure.~~ drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

~~(e) (i) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia.~~

~~(ii) The term does not include a nitrous oxide and oxygen mixture or any other anesthetic administered to produce conscious sedation.~~

(2) Except for the provisions of 37-4-104, a person is practicing dentistry under this chapter if the person:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to the person, any other person, or any agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed, unless the person is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist, as provided in 37-4-104;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S." or "D.M.D.", or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that the person can perform or will attempt to perform dental operations or render a diagnosis in connection with dental operations; or

(l) engages in any of the practices included in the curricula of recognized dental colleges."

Section 6. Section 37-4-511, MCA, is amended to read:

"37-4-511. Limitations ~~on administration of general anesthetics and practices involving~~ *regarding deep sedation or* general anesthesia. ~~(1) A person engaged in the practice of dentistry or oral surgery may not perform any dental or surgical procedure upon another person if a general anesthetic is administered unless the anesthetic is administered and monitored by:~~

~~(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;~~

~~(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or~~

~~(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.~~

~~(2) A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).~~

~~(3)~~*(1)* A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under ~~light~~ *deep sedation or* general anesthesia unless the vital signs of the patient are continually monitored by another ~~person who has been examined by the board or its agent in life support skills and who has demonstrated a satisfactory level of proficiency as established by the board~~ *trained health care professional*.

~~(4) A person engaged in the practice of dentistry or oral surgery may not administer a general anesthetic to any other person unless the administering person satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications of general~~

~~anesthesia. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3).~~

~~(5)~~*(2)* The facility in which *deep sedation or* general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under *deep sedation or* general anesthesia, and to treat the complications that may arise from *deep sedation or* general anesthesia."

Section 7. Section 37-6-302, MCA, is amended to read:

"37-6-302. Qualifications for licensure. (1) A person who wishes to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry.

(2) A person may not be granted a license to practice podiatry in this state unless the person:

(a) is of good moral character as determined by the board;

(b) is a graduate of a school of podiatry approved by the board;

(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board;

(d) has made a personal appearance before the board; *and*

(e) has passed an examination administered by the national board of podiatry examiners and is a diplomate of the national board of podiatry examiners~~; and~~

~~(f) has obtained a score of at least 75% on an examination administered by the board~~.

(3) The board may waive the requirements described in ~~subsections~~ *subsection* (2)(d) ~~and (2)(f)~~."

Section 8. Section 37-31-305, MCA, is amended to read:

"37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach ~~manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics or to teach cosmetology,~~ *or instruct in a school of barbering, cosmetology, electrology, esthetics, or manicuring,* the person shall obtain from the department a license to teach ~~cosmetology~~.

(2) To be eligible ~~to take an examination to obtain a license to teach cosmetology~~ *for a license to teach barbering, cosmetology, electrology, esthetics, or manicuring*, a person must*:*~~:~~

~~(a)~~*(a)* be a graduate of high school or possess an equivalent of a high school diploma that is recognized by the superintendent of public instruction~~; and~~*;*

~~(b) (i)~~*(b)* have a license to practice ~~cosmetology~~ issued by the department *in the particular area of practice in which the person plans to teach* ~~and have received a diploma from a licensed school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training~~; ~~or~~

~~(ii)~~*(c)* have been actively engaged ~~as a cosmetologist~~ *in that particular area of practice* for ~~3~~ *12* continuous ~~years immediately~~ *months* before taking the teacher's examination*; and*

(d) have received a diploma from a licensed school approved by the board, certifying satisfactory completion of 650 hours of student teacher training.

~~(3) Before a person may teach manicuring to a person seeking only to be licensed to practice manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach manicuring.~~

~~(4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:~~

~~(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and~~

~~(b) (i) have a license to practice manicuring or cosmetology issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or~~

~~(ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.~~

~~(5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach esthetics.~~

~~(6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:~~

~~(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and~~

~~(b) (i) have a license to practice esthetics or cosmetology issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or~~

~~(ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.~~

~~(7) To be eligible to take an examination to obtain a license to teach barbering, a person must:~~

~~(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and~~

~~(b) (i) have a license to practice barbering issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 500 hours of student teacher training; or~~

~~(ii) have been actively engaged as a barber for 3 continuous years immediately before taking the teacher's examination.~~

~~(8) To be eligible to take an examination for a license to teach electrology, a person must:~~

~~(a) be a high school graduate or possess an equivalent of a high school diploma recognized by the superintendent of public instruction;~~

~~(b) have a 100-hour teacher certificate; and~~

~~(c) have been actively engaged as an electrologist for 3 continuous years immediately preceding taking the teacher's examination.~~"

Section 9. Section 37-31-309, MCA, is amended to read:

"37-31-309. Booth rental license. *(1) A* ~~No~~ person may *not* receive a booth rental license under 37-31-302 without proving to the satisfaction of the board that the booth will be used and maintained in compliance with the rules and regulations promulgated by the board, including sanitary rules prescribed under 37-31-204.

(2) A booth rental license that is not renewed within 1 year of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained. The provisions of 37-1-141 do not apply to this subsection."

Section 10. Section 37-31-312, MCA, is amended to read:

"37-31-312. Inspection — temporary permits. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting salons or shops and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a salon or shop, booth, school of barbering, school of cosmetology, school of electrology, school of esthetics, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation of a licensee's or school's license.

(2) When an owner or operator applies for a shop or salon license and pays licensure and inspection fees prescribed by the board, the board:

(a) may authorize the department to grant to a new salon or shop a temporary operating permit; or

(b) shall, in order to avoid a disruption of business, authorize the department to grant a temporary operating permit to an existing shop or salon whose owner or operator is currently in good standing with the board, as defined by the board, and who is relocating to a new location. An owner or operator of an existing shop or salon may not receive a temporary operating permit under this section within 90 days of a license renewal date.

(3) A temporary operating permit granted pursuant to subsection (2) authorizes the salon or shop to operate ~~for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever comes first~~ *until an inspection is conducted of the salon or shop and the salon or shop owner or manager has had 30 days to respond in writing to all inspection report violations to the board office. A license will not be granted to a salon or shop if the board does not receive a response within 30 days from the date of the inspection or the response received does not indicate that all of the inspection violations have been corrected, in which case a new license application must be filed*. A temporary permit is not renewable.

(4) The department shall require an inspector appointed under subsection (1) to conduct an annual inspection of each salon or shop in the state."

Section 11. Section 37-47-202, MCA, is amended to read:

"37-47-202. Executive director — powers and duties. ~~(1)~~ The department may hire an executive director to assist the board in carrying out its duties under this chapter.

~~(2) The duties of the executive director include:~~

~~(a) processing and investigating applications for licensure as an outfitter or guide;~~

~~(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;~~

~~(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and~~

~~(d) coordinating investigations with other local, state, and federal agencies.~~"

Section 12. Section 37-47-310, MCA, is amended to read:

"37-47-310. Transfer or amendment of outfitter's license — transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, a person designated by the family of ~~a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure of the business~~ *an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license*.

(4) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, wildlife, and parks commission and that a property right does not attach to the transferred river-use days."

Section 13. Section 37-47-351, MCA, is amended to read:

"37-47-351. Investigators — ~~qualifications.~~ ~~(1)~~ The department may hire investigators to assist the board in investigations and inspections authorized by this chapter.

~~(2) To qualify as an investigator, a person must:~~

~~(a) be a citizen of the United States and be a Montana resident;~~

~~(b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide, or professional guide or as a regulator of the outfitting profession; and~~

~~(c) have not less than 2 years' experience as a licensed private investigator or as an investigator, detective, special agent, or peace officer of a city, county, or state or of a federal agency.~~"

Section 14. Section 37-51-204, MCA, is amended to read:

"37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction.

(4) Education information obtained electronically by the board or stored in the board's databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with 37-1-131."

Section 15. Section 37-51-308, MCA, is amended to read:

"37-51-308. Broker's office — notice to department of change of address. (1) A ~~resident~~ licensed broker shall maintain a ~~fixed office in this state. The~~ *designated physical address where the* original license of the broker and the original license of each salesperson associated or under contract with the broker ~~shall~~ *must* be prominently displayed ~~in the office~~. The *designated* address of the ~~office and any branch office shall~~ *broker must* be ~~designated~~ *indicated* on the broker's license.

(2) In case of removal from the designated address, the ~~licensee~~ *broker* shall notify the department before removal or within 10 days ~~thereafter~~ *after removal*, designating the new ~~location of this office~~ *physical address* and paying the required fee, whereupon a license for the new location must be issued for the unexpired period."

Section 16. Section 37-51-605, MCA, is amended to read:

"37-51-605. Property manager's office — notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. ~~The office manager must be designated on the license.~~ If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address."

Section 17. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

(3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses a firearm in the performance of the individual's duties.

(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the individual's duties.

(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(7) "Board" means the board of private security provided for in 2-15-1781.

(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(9) "Contract security company" means any person who undertakes to provide a private security guard, alarm response runner, armored car service,

street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(10) "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (a) "Electronic security company" means a person who *sells,* installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

(12) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

(13) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

(14) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes against the United States or any state or territory of the United States.

(15) "Licensee" means a person licensed under this chapter.

(16) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(17) "Person" means an individual, firm, company, association, organization, partnership, or corporation.

(18) "Private investigator" means a person other than an insurance adjuster who for any consideration makes or agrees to make any investigation with reference to:

(a) crimes against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) gathering evidence to be used before any court, board, officer, or investigating committee.

(19) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or

trespass on private property or the direction of the movements of the public in public areas.

(20) "Process server" means a person described in 25-1-1101(1).

(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each ~~branch~~ office located in this state where the business of the licensee is conducted.

(23) (a) "Security alarm installer" means an individual who *sells,* installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

(24) (a) "Security alarm system" means an assembly of equipment and devices or a single device or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a location.

(b) The term does not include systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

(26) "Street patrol service" means a person providing patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the person's duties and responsibilities.

(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess a firearm in the performance of the individual's duties.

(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess a firearm in the performance of those duties."

Section 18. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, licensees, holders of identification cards, and process servers, in addition to those prescribed in Title 25, chapter 1, part 11, and in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original licenses and identification cards, and providing for refunding of any fees;

(3) (a) requiring approval of the board prior to the establishment of branch offices of any licensee; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator, private security guard, security alarm installer, and alarm response runner training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

~~(7) requiring the maintenance of records;~~

~~(8)~~*(7)* requiring licensees, except process servers, to file an insurance policy with the board; and

~~(9)~~*(8)* providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the requirements for age, employment experience, or written examination."

Section 19. Section 37-60-303, MCA, is amended to read:

"37-60-303. License or registration qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence ~~under oath~~ that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States or a legal, permanent resident of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

(a) complete the requirements of a training program certified by the board and provide, on a form prescribed by the ~~board~~ *department*, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence ~~under oath~~ *under oath* that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant for a license as a private security patrol officer or private investigator who will wear, carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure or registration under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board or, if doing business as a process server, must be registered by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part or, if doing business as a process server, must be registered by the board."

Section 20. Section 37-67-306, MCA, is amended to read:

"37-67-306. Qualifications of applicant for licensure as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects under the direct supervision of a professional engineer, unless exempt under 37-67-320(2), and ~~who has passed examinations of a grade and character that~~ *whose qualifications* indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more, with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 of those years the applicant has been in charge of important engineering projects, of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the principles and practices of

engineering. Upon passing the examination, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(4) Teaching engineering in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements if research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board and who provides a specific record of at least 4 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a license to practice engineering in this state if the applicant is otherwise qualified."

Section 21. Section 37-67-312, MCA, is amended to read:

"37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be licensed without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of examiners for engineering and surveying and whose qualifications meet the requirements of this chapter may upon application be licensed without further examination.

(3) A person holding a license to engage in the practice of engineering in another state, territory, or possession of the United States, the District of Columbia, or any foreign country may be issued a license in this state if the person applies in the manner required by the board, meets the qualifications provided in 37-67-306, and has taken and passed the examinations provided for in 37-67-306 and 37-67-311. The experience requirements of 37-67-306 may be met with experience gained after initial licensure that indicates to the board that the applicant is competent to practice engineering."

Section 22. Section 37-67-313, MCA, is amended to read:

"37-67-313. Comity consideration for land surveyors from other states. *(1)* A person holding a certificate of registration to engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, will be given comity consideration. However, the person may be asked to meet the conditions for taking examinations and to take them as the board considers necessary to determine the person's qualifications. In any event, the person shall pass a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

(2) A person holding a license to engage in the practice of land surveying in another state, territory, or possession of the United States, the District of Columbia, or any foreign country may be issued a license in this state if the person applies in the manner required by the board, meets the qualifications provided in 37-67-309, has taken and passed the examinations provided for in 37-67-309 and 37-67-311, and has taken and passed a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state. The experience requirements of 37-67-309 may be met with experience gained after initial licensure that indicates to the board that the applicant is competent to practice land surveying."

Section 23. Section 50-76-113, MCA, is amended to read:

"50-76-113. Recognition of national certification. (1) The department shall issue a first-class or second-class crane and hoist engineer's license to any individual who is certified by the national commission for the certification of crane operators *or any other similar certifying organization that has been approved by the department* as having qualifications that are at least substantially equivalent to the requirements of this state for licensing as a first-class or second-class crane and hoist engineer.

(2) An individual licensed under this section is subject to all requirements of this chapter pertaining to licensed first-class or second-class crane and hoist engineers, including license fees, biennial physical exams, and 5-year reexaminations."

Section 24. Repealer. The following section of the Montana Code Annotated is repealed:

37-7-204. Posting of prescription drug prices — adoption of list by rule.

Approved April 1, 2011

CHAPTER NO. 101

[HB 99]

AN ACT GENERALLY REVISING LAWS RELATING TO ABSENTEE BALLOTS AND MAIL BALLOTS; CLARIFYING PROCEDURES FOR AN ELECTOR TO VOTE ABSENTEE; CLARIFYING PROVISIONS RELATED TO REPLACEMENT BALLOTS; CLARIFYING PROCEDURES FOR RESOLVING PROBLEMS WITH RETURN ENVELOPE SIGNATURES; PROVIDING AN ELECTOR WITH NOTICE AND OPPORTUNITY TO RESOLVE QUESTIONS ABOUT OR PROBLEMS WITH THE ELECTOR'S SIGNATURE ON A RETURN ENVELOPE; CLARIFYING STATUTES RELATED TO VALID AND INVALID BALLOTS; REVISING BALLOT COUNTING PROCEDURES; AMENDING SECTIONS 13-13-201, 13-13-204, 13-13-212, 13-13-213, 13-13-222, 13-13-241, 13-15-201, 13-19-102, 13-19-106, 13-19-205, 13-19-206, 13-19-207, 13-19-301, 13-19-303, 13-19-305, 13-19-306, 13-19-308, 13-19-309, 13-19-312, AND 13-19-313, MCA; REPEALING SECTIONS 13-19-310 AND 13-19-311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-201, MCA, is amended to read:

"13-13-201. Voting by absentee ballot — procedures. (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;

(d) executing the affidavit printed on the return envelope; and

(e) returning the return envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to*:*

(i) the election ~~administrator~~ *office;*

(ii) a polling place within the elector's county;

(iii) ~~or,~~ pursuant to 13-13-229, ~~to~~ the special absentee election board*; or*

(iv) in a mail ballot election held pursuant to Title 13, chapter 19, a designated place of deposit within the elector's county.

(3) Except as provided in 13-21-206 and 13-21-207, in order for the ballot to be counted, each elector shall return it in a manner that ensures the ballot is received prior to 8 p.m. on election day.

~~(3)~~*(4)* A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address."

Section 2. Section 13-13-204, MCA, is amended to read:

"13-13-204. Authority to vote in person — printing error or ballot destroyed — ~~failure to receive ballot~~ *replacement ballot* — effect of absentee elector's death. (1) (a) If an elector has received but not voted an absentee ballot and the absentee ballot contains printing errors or omissions, the elector may receive a replacement or corrected ballot ~~and vote in person at the election administrator's office~~.

(b) The death of a candidate after the printing of the ballot constitutes a printing error or omission on the ballot.

(2) ~~If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received or was destroyed. The ballot must be handled as a provisional ballot under 13-15-107~~ *(a) An elector may request a replacement ballot from the election administrator pursuant to subsection (1) or if the original ballot is destroyed, spoiled, lost, or not received by the elector*.

(b) An elector whose original ballot is destroyed, spoiled, lost, or not received by the elector may appear at the appropriate polling place on election day and vote in person after being issued a provisional ballot.

(3) A request for a replacement ballot must be made on a form prescribed by the secretary of state and submitted to the election administrator in person, by regular or electronic mail, or by facsimile no later than 8 p.m. on election day.

(4) Upon receiving a request for a replacement ballot pursuant to subsection (3), the election administrator shall mark the original issued ballot as void in the statewide voter registration database and issue a replacement regular ballot to the elector.

(5) A replacement ballot may also be issued pursuant to [section 7].

~~(3)~~*(6)* If an elector votes by absentee ballot and the ballot has been mailed or otherwise returned to the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted."

Section 3. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail a forwardable address confirmation form in January of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election.

(5) In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in subsection (4)."

Section 4. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) All absentee ballot application forms must be addressed to the appropriate election official.

(2) Except as provided in subsection ~~(5)~~ *(4)*, the elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector's application and forward it to the election administrator.

(3) (a) The election administrator shall compare the signature on the application with the applicant's signature on the registration card or the agent's signature on the agent designation form. If convinced that the individual making the application is the same as the one whose name appears on the registration card or the agent designation form, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214, subject to 13-13-205.

(b) If *no signature is provided or* the election administrator is not convinced that the individual signing the application is the same person whose name appears on the registration card or agent designation form, the election administrator shall notify the elector ~~or agent, either by mail or by the most expedient method available under rules adopted by the secretary of state, and inform the elector or agent that the elector or agent may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.~~

~~(4) If an election administrator cannot verify the signature, a ballot may not be provided to the elector~~ *as provided in [section 7]*.

~~(5)~~*(4)* In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card or agent designation form to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card or agent designation form, the special absentee election board shall provide a ballot to the elector when the ballot is available pursuant to 13-13-205."

Section 5. Section 13-13-222, MCA, is amended to read:

"13-13-222. Marking ballot before election day. (1) As soon as the official ballots are available pursuant to 13-13-205, the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

(3) If the ballot is marked before the election administrator, the election administrator shall deal with it as provided in 13-13-231.

(4) ~~The ballot is considered voted at the time it~~ *For the purposes of this section, an official ballot is voted when the ballot* is received by the election administrator."

Section 6. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) ~~After an absentee ballot is received~~ *Upon receipt of each absentee ballot return envelope*, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request with the signature on the ~~absentee ballot~~ return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector ~~by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot~~ *as provided in [section 7]*.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form *or if there is no signature on the absentee ballot return envelope*, the election administrator shall notify the elector~~, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.~~

~~(6) The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.~~

~~(7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107~~ *as provided in [section 7].*

(6) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in [section 7].

~~(8)~~*(7)* ~~After receiving an~~ *If the validity of a particular ballot is confirmed pursuant to this section and [section 7], the election administrator shall remove the* absentee ballot secrecy envelope, *and* without opening the secrecy envelope, ~~the~~ election ~~judges~~ *officials* shall ~~on election day~~ place the secrecy envelope in the proper ballot box."

Section 7. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's absentee ballot application or return envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator has not received or is unable to verify the elector's or agent's signature under 13-13-213 or 13-13-241.

(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

(a) by mail, facsimile, electronic means, or in person, verify the elector's or agent's signature or provide a signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration card containing the elector's current signature, or by providing a new agent designation form; or

(b) if necessary, request and receive a replacement ballot pursuant to 13-13-204.

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

(4) (a) If a ballot is returned as undeliverable, the election administrator shall investigate the reason for the return.

(b) An elector must be provided with:

(i) the elector's undeliverable ballot upon notification by the elector of the elector's correct mailing address; or

(ii) a replacement ballot if a request has been made pursuant to 13-13-204.

Section 8. Section 13-15-201, MCA, is amended to read:

"13-15-201. Preparation for count — *absentee ballot count procedures.* (1) Subject to 13-10-311, to prepare for a ~~manual or automatic~~ count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

~~(2) An absentee ballot must be rejected and handled as provided in 13-15-108 if the envelope contains more than one voted ballot for each election.~~

~~(3)~~*(2)* The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

~~(4)~~*(3)* If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

~~(5)~~*(4)* A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

~~(6)~~*(5)* If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

(6) Only valid absentee ballots may be counted in an election conducted under this chapter.

(7) For the purpose of this chapter, a voted absentee ballot is valid only if:

(a) the elector's signature on the affirmation on the return envelope is verified pursuant to 13-13-241; and

(b) it is received before 8 p.m. on election day, except as provided in 13-21-206 and 13-21-207.

(8) (a) A ballot is invalid if:

(i) problems with the ballot have not been resolved pursuant to [section 7];

(ii) any identifying marks are placed on the ballot by the elector; or

(iii) except as provided in subsection (8)(b), more than one ballot is enclosed in a single return or secrecy envelope.

(b) The provisions of subsection (8)(a)(iii) do not apply if:

(i) there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or

(ii) the return envelope contains ballots from the same household, each ballot is in its own secrecy envelope, and the return envelope contains a valid signature for each elector who has returned a ballot."

Section 9. Section 13-19-102, MCA, is amended to read:

"13-19-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Ballot" means the ballot or set of ballots that is to be returned by a specified election day.

(2) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

~~(4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:~~

~~(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and~~

~~(b) allow it to be used in the United States mail.~~

~~(5)~~*(4)* "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's ballot and to prevent that elector's ballot from being distinguished from the ballots of other electors.

(5) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail."

Section 10. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each ~~return/verification~~ *signature* envelope must contain a form *that is the same as the form for absentee ballot return envelopes and that is* prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a ~~return/verification~~ *signature* envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206 *and 13-21-207*, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the ~~return/verification~~ *signature* envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the ~~return/verification~~ *signature* envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box.

(8) Except as provided in 13-19-312, after the close of voting on election day, voted ballots must be counted and canvassed as provided in Title 13, chapter 15."

Section 11. Section 13-19-205, MCA, is amended to read:

"13-19-205. Written plan for conduct of election — amendments — approval procedures. (1) The election administrator shall prepare a written plan for the conduct of the election and shall submit it to the secretary of state in a manner that ensures that it is received at least 60 days prior to the date set for the election.

(2) The written plan must include:

(a) a timetable for the election; and

(b) sample written instructions that will be sent to the electors. The instructions must include but are not limited to:

(i) information on the estimated amount of postage required to return the ballot; ~~and~~

(ii) (A) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is available; or

(B) if the information on location and hours of places of deposit is not available, a section that will allow the information to be added before the instructions are mailed to electors*; and*

(iii) any applicable instructions specified under 13-13-214(5).

(3) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(4) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(5) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan unless the election is canceled for any reason provided by law."

Section 12. Section 13-19-206, MCA, is amended to read:

"13-19-206. Distributing materials to electors — procedure. For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot for each type of election being held on the specified election day;

(b) a secrecy envelope;

(c) a ~~return/verification~~ *signature* envelope; and

(d) complete written instructions, as approved by the secretary of state pursuant to 13-19-205, for mail ballot voting procedures;

(3) ensure that each packet is:

(a) addressed to a single individual elector at the most current address available from the official registration records; and

(b) deposited in the United States mail with sufficient postage for it to be delivered to the elector's address; and

(4) mail the packet in a manner that conforms to postal regulations to require the return, not forwarding, of undelivered packets."

Section 13. Section 13-19-207, MCA, is amended to read:

"13-19-207. When materials to be mailed. (1) Except as provided in subsection (2), for any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day.

(2) (a) All ballots mailed to electors on the active list *and provisionally registered list* must be mailed the same day.

(b) At any time before noon on the day before election day, a ballot may be mailed or, upon request, provided in person at the election administrator's office to:

(i) an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual who registers under the late registration option provided for in 13-2-304.

(c) An elector on the inactive list shall vote at the election administrator's office on election day if the elector reactivates the elector's registration after noon on the day before election day.

(d) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator's office."

Section 14. Section 13-19-301, MCA, is amended to read:

"13-19-301. Voting mail ballots. (1) Upon receipt of a mailed ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope *containing one ballot for each election being held* in the ~~return/verification~~ *signature* envelope;

(d) executing the affidavit printed on the ~~return/verification~~ *signature* envelope; and

(e) returning the ~~return/verification~~ *signature* envelope with ~~the secrecy envelope containing the ballot~~ *all appropriate enclosures*, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when the marked ballot is received at a place of deposit."

Section 15. Section 13-19-303, MCA, is amended to read:

"13-19-303. Voting by elector when absent from place of residence during conduct of election. (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

(a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or

(b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than the address that appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) (a) Ballots mailed to electors on the active list *and provisionally registered list* pursuant to this section must be mailed the same day that all other ballots are mailed, except that a ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is available.

(b) A ballot may be provided pursuant to this section until noon on the day before election day if, after the ballots are mailed to active *and provisionally registered* electors:

(i) an inactive elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual registers under the late registration option provided for in 13-2-304 *and receives a ballot in person*."

Section 16. Section 13-19-305, MCA, is amended to read:

"13-19-305. Replacement ballots — procedures. ~~(1) An elector may obtain a replacement ballot as provided in this section if the original ballot is destroyed, spoiled, lost, or not received by the elector~~ *Replacement ballots may be issued as specified in 13-13-204.*

~~(2) An elector seeking or receiving a replacement ballot shall sign a sworn statement stating that the original ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.~~

~~(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before another ballot may be issued.~~

~~(4) The election administrator shall designate the election administrator's office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.~~

~~(5) A replacement ballot may also be issued pursuant to 13-19-313.~~

~~(6) The election administrator shall keep a record of each replacement ballot issued. If the election administrator later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, the election administrator shall immediately notify the county attorney and the secretary of state of each instance.~~"

Section 17. Section 13-19-306, MCA, is amended to read:

"13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or the elector's agent or designee may return the elector's ballot on or before election day by either:

(a) depositing the ~~return/verification~~ *signature* envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) Except as provided in 13-21-206 *and 13-21-207*, in order for the ballot to be counted, each elector shall return it in a manner that ensures it is received prior to 8 p.m. on election day."

Section 18. Section 13-19-308, MCA, is amended to read:

"13-19-308. Disposition of ballots returned in person. ~~Ballots~~ *If a ballot is* returned in person by the elector or the elector's agent or designee ~~must be processed as follows:~~

~~(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector, agent, or designee is present, officials shall:~~

~~(a) verify the signature pursuant to 13-19-310;~~

~~(b) resolve any questions as to the validity of the ballot as provided in 13-19-314; and~~

~~(c) deposit the unopened secrecy envelope containing the voted ballot in the official ballot box.~~

~~(2) If returned~~ to a place of deposit other than the election administrator's office, the election officials on location shall:

~~(a)~~*(1)* keep a log of the names of all electors for whom the officials receive ballots;

~~(b)~~*(2)* deposit the unopened ~~return/verification~~ *signature* envelope in the sealed ballot transport box provided for that purpose; and

~~(c)~~*(3)* securely retain all voted ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots handled in the same manner provided for ballots returned ~~by mail~~ *under 13-19-309*."

Section 19. Section 13-19-309, MCA, is amended to read:

"13-19-309. Disposition of ballots returned ~~by mail~~ *to election administrator's office.* ~~(1) Upon receipt of each return/verification envelope, election officials shall:~~

~~(a) compare the name with the official register to determine that the person has not previously voted;~~

~~(b) verify the signature on the affidavit in the manner provided by 13-19-310;~~

~~(c) open the return/verification envelope and retain it as an official record;~~

~~(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;~~

~~(e) if the ballot is valid, record the name of the elector in the official register as having voted; and~~

~~(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.~~

~~(2) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-19-314.~~ *Ballots returned to the election administrator's office must be handled as provided for absentee ballots in 13-13-241.*"

Section 20. Section 13-19-312, MCA, is amended to read:

"13-19-312. ~~Counting~~ *Preparation for count and counting* procedure. *(1) The preparation for counting ballots must be as provided in 13-15-201.*

~~(1)~~*(2)* Except as provided in subsection ~~(2)~~ *(3)*, after the close of voting on election day, the counting board appointed pursuant to 13-15-112 shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the voted ballot; and

(c) proceed to count the votes as provided in Title 13, chapter 15.

~~(2)~~*(3)* On election day, the election administrator may begin the procedures described in subsection ~~(1)~~ *(2)* before the polls close if the election administrator complies with the procedures described in 13-15-207(3)."

Section 21. Section 13-19-313, MCA, is amended to read:

"13-19-313. Notice to elector — opportunity to resolve questions. ~~(1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator:~~

~~(a) is unable to verify the elector's or agent's signature under 13-19-310;~~

~~(b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311; or~~

~~(c) finds that the elector has failed to attest to the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address as provided in 13-19-106.~~

~~(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:~~

~~(a) by mail or in person, verify the elector's or agent's signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration card containing the elector's current signature, or by providing a new agent designation form;~~

~~(b) by mail, facsimile, telephone, or electronic means, provide the address information required under 13-19-106 or correct any minor mistake if the correction would render the ballot valid; or~~

~~(c) if necessary, request and receive a replacement ballot and vote it at the election administrator's office.~~

~~(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.~~

Notice to the elector and the opportunity to resolve questions must be as provided in [section 7], except as follows:

~~(4) (a)~~*(1)* If a mail ballot is returned as undeliverable, the election administrator shall ~~investigate~~ *attempt to contact the elector by the most expedient means available to determine* the reason for the return and mail a confirmation notice *if the elector cannot be contacted otherwise*. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice.

~~(b)~~*(2)* If the confirmation notice is returned to the election administrator, *the election administrator shall place* the elector ~~must be placed~~ on the inactive list provided for in 13-2-220 until the elector becomes a qualified elector."

Section 22. Repealer. The following sections of the Montana Code Annotated are repealed:

13-19-310. Signature verification — procedures.

13-19-311. Valid ballots — requirements.

Section 23. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 13, chapter 13, part 2, and the provisions of Title 13, chapter 13, part 2, apply to [section 7].

Section 24. Effective date. [This act] is effective January 1, 2012.

Approved April 1, 2011

CHAPTER NO. 102

[HB 141]

AN ACT GENERALLY REVISING THE MAKEUP, OPERATION, AND PROCEDURES OF THE BOARD OF PARDONS AND PAROLE; AMENDING SECTIONS 2-15-2302, 46-23-103, 46-23-104, 46-23-109, 46-23-201, 46-23-202, 46-23-210, 46-23-215, 46-23-218, 46-23-301, 46-23-302, 46-23-306, 46-23-307, AND 46-23-1025, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2302, MCA, is amended to read:

"2-15-2302. Board of pardons and parole — composition — allocation — quasi-judicial. (1) There is a board of pardons and parole.

(2) The board consists of ~~three~~ *seven* members ~~and four auxiliary members~~, each of whom must have knowledge of American Indian culture and problems gained through training as required by rules adopted by the board. One member must be an enrolled member of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana. The tribal member may not be required to hear and act on all American Indian applications before the board. Members of the board~~, including the auxiliary members,~~ must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

~~(3) An auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.~~

(3) The governor shall attempt to establish geographic balance among board members.

(4) Board members ~~and auxiliary members~~ shall serve staggered 4-year terms. The governor shall appoint ~~one member and two auxiliary~~ *three* members in January of the first year of the governor's term, ~~one member and one auxiliary member~~ *two members* in January of the second year of the governor's term, and ~~one member and one auxiliary member~~ *two members* in January of the third year of the governor's term. *The provisions of 2-15-124(2) do not apply to the board.*

(5) The terms of board members ~~and auxiliary members~~ run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(7) The board~~, including the auxiliary members,~~ is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

~~(8) The provisions of 2-15-124(2) do not apply to the board.~~

(8) A favorable vote of at least a majority of the seven members of the board is required to implement any policy, procedure, or administrative rule. A favorable vote of at least a majority of the members of a hearing panel, as defined in 46-23-103, is required to make decisions regarding parole and executive clemency, and the provisions of 2-15-124(8) do not apply."

Section 2. Section 46-23-103, MCA, is amended to read:

"46-23-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Hearing panel" means a panel made up of ~~at least~~ two *or three* board members appointed ~~by the board~~ to conduct parole hearings*, revocation hearings, rescission hearings, and administrative parole reviews and to make final decisions and recommendations in matters of executive clemency*.

(5) "Parole" means the release to the community of a prisoner by the decision of a hearing panel prior to the expiration of the prisoner's term, subject to conditions imposed by the hearing panel and subject to supervision of the department.

(6) "Victim" means a victim as defined in 46-18-243."

Section 3. Section 46-23-104, MCA, is amended to read:

"46-23-104. Board of pardons and parole. (1) The board of pardons and parole is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet monthly at a place determined by the board and at other times and places that the board considers necessary.

(3) The principal office of the board is in Deer Lodge.

(4) The *presiding officer of the* board *or a designee in consultation with the members* shall appoint hearing panels *and their presiding officers* to conduct ~~parole~~ hearings and to issue ~~a~~ final ~~decision~~ *decisions* concerning parole *and executive clemency and shall request out-of-state releasing authorities to conduct hearings pursuant to Article IV(6) of the Western Interstate Corrections Compact*. ~~If the two board members of the hearing panel are unable to reach a unanimous decision, the presiding officer of the board shall convene a panel of three board members as soon as is practicable to rehear the case.~~ *The presiding officer of the board or a designee shall attempt to make hearing panel appointments in a manner that ensures equitable distribution of workload among board members. If a hearing panel consisting of two members is unable to reach a unanimous decision, the presiding officer of the board shall appoint a third member to consider all pertinent information and render a final decision.* The hearing panels have the full authority and power of the board to order the denial, grant, or revocation of parole *and to make final decisions and recommendations in matters of executive clemency*."

Section 4. Section 46-23-109, MCA, is amended to read:

"46-23-109. Parole hearings and administrative reviews — telephone — videoconference. The ~~board and the~~ board's hearing ~~panel~~ *panels* may hold any ~~parole~~ hearing via interactive videoconference*,* ~~and~~ may hold an administrative review via telephone conference*, and, at the applicant's request, may hold a clemency hearing via telephone conference*."

Section 5. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole — *rulemaking*. (1) Subject to the restrictions contained in subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person who is confined in a state prison or the state hospital*,* ~~or~~ any person who is sentenced to the state prison and confined in a prerelease center*, or any person who has been sentenced to prison as an adult pursuant to 41-5-206 and is confined in a youth correctional facility* when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be ~~paroled~~ *granted a nonmedical parole*.

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

(6) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a prisoner may request earlier hearing or review."

Section 6. Section 46-23-202, MCA, is amended to read:

"46-23-202. Initial parole hearing — conduct of hearing. Within the 2 months prior to a prisoner's official parole eligibility date or as soon after that date as possible, the department shall make the prisoner available for a hearing

before a hearing panel. The hearing panel shall consider all available and pertinent information regarding the prisoner, including:

(1) the circumstances of the offense;

(2) the prisoner's previous social history and criminal record;

(3) the prisoner's conduct, employment, and attitude in prison;

(4) the reports of any physical*, psychological,* and mental ~~examinations~~ *evaluations* that have been made; and

(5) written or oral statements from *criminal justice authorities or* any *other* interested person or the interested person's legal representative, including written or oral statements from a victim regarding the effects of the crime on the victim. A victim's statement may also include but is not limited to the circumstances surrounding the crime, the manner in which the crime was committed, and the victim's opinion as to whether the prisoner should be paroled. The victim's statement may be kept confidential."

Section 7. Section 46-23-210, MCA, is amended to read:

"46-23-210. Medical parole. (1) The board may release on medical parole by appropriate order any person confined in a state prison *or adult community corrections facility* or any person sentenced to a state prison and confined in a prerelease center who:

(a) is not under sentence of death or sentence of life imprisonment without possibility of release;

(b) is unlikely to pose a detriment to the person, victim, or community; and

(c) (i) has a medical condition requiring extensive medical attention; or

(ii) has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.

(2) A person designated ineligible for parole under 46-18-202(2) must have approval of the sentencing judge before being eligible for medical parole. *If the court does not respond within 30 days to a written request from the department, the person is considered to be approved by the court for medical parole.* The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection (1)(a).

(3) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the administrator of the correctional institution in which the person is incarcerated. The application must include a detailed description of the person's proposed placement and medical care and an explanation of how the person's medical care will be financed if the person is released on medical parole. The application must include a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The physician's report must include:

(a) a description of the medical attention required to treat the person's medical condition;

(b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the medical condition or diagnosis and the extent of any potential recovery. The prognosis may include whether the person has a medical condition causing the likelihood of death within 6 months.

(4) The application must be reviewed and accepted by the department before the board may consider granting a medical parole.

(5) Upon receiving the application from the department, ~~the board~~ *a hearing panel* shall hold a hearing. Any interested person or the interested person's representative may submit written or oral statements, including written or oral statements from a victim. A victim's statement may be kept confidential.

(6) The ~~board~~ *hearing panel* shall require as a condition of medical parole that the person agree to placement in an environment approved by the department during the parole period, including but not limited to a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other appropriate community corrections facility or program, or to a family home. The ~~board~~ *hearing panel* may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's medical condition has improved to the extent that the person no longer requires extensive medical attention or is likely to pose a detriment to the person, victim, or community, ~~the board~~ *a hearing panel* may revoke the parole and return the person to the custody of the department.

(7) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to medical parole.

(9) Before July 1 of each even-numbered year, the board *and the department* shall report to the children, families, health, and human services interim committee and the law and justice interim committee regarding the outcome related to any person released on medical parole since the last report, including health care costs and payments related to the care of the person released on medical parole."

Section 8. Section 46-23-215, MCA, is amended to read:

"46-23-215. Conditions of parole. (1) A prisoner while on parole remains in the legal custody of the department but is subject to the orders of the board.

(2) When a hearing panel issues an order for parole, the order must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. The prisoner may not be paroled until the prisoner provides a biological sample for purposes of Title 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the prisoner was convicted of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense as defined in 46-23-502. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a hearing panel grants a parole to a prisoner on the condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the hearing panel *or the presiding officer of the board or a designee* may grant the prisoner a furlough, not to exceed two *consecutive* 10-day periods, for purposes of fulfilling the condition. While on furlough, the prisoner *is not on parole and is subject to official detention as defined in 45-7-306. The prisoner* remains in the legal custody of the department and is subject to all other conditions ~~recited~~ *ordered* by the hearing panel *or the presiding officer of the board or a designee*."

Section 9. Section 46-23-218, MCA, is amended to read:

"46-23-218. Authority of board to adopt rules — purpose for training. (1) The board may adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings, videoconference hearings, telephone conference administrative reviews, progress reviews, clemency proceedings, the conditions to be imposed upon parolees, the training of board members ~~and auxiliary members~~ regarding American Indian culture and problems, and other matters pertinent to service on the board.

(2) The legislature finds that American Indians incarcerated in state prisons constitute a disproportionate percentage of the total inmate population when compared to the American Indian population percentage of the total state population. The training of board members regarding American Indian culture and problems is necessary in order for the board to deal appropriately with American Indian inmates appearing before the board."

Section 10. Section 46-23-301, MCA, is amended to read:

"46-23-301. Cases of executive clemency — application for clemency — definitions. (1) (a) "Clemency" means kindness, mercy, or leniency that may be exercised by the governor toward a convicted person. The governor may grant clemency in the form of:

(i) the remission of fines or forfeitures;

(ii) the commutation of a sentence to one that is less severe;

(iii) respite; or

(iv) pardon.

(b) "Pardon" means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.

(2) A person convicted of a crime need not exhaust judicial or administrative remedies before filing an application for clemency, except that an application may not be filed with respect to a sentence of death while an automatic review proceeding is pending before the Montana supreme court under 46-18-307 through 46-18-310. The board shall consider cases of executive clemency only upon application. All applications for executive clemency must be made to the board. An application for executive clemency in capital cases may be filed with the board no later than 10 days after the district court sets a date of execution. Applications may be filed only by the person convicted of the crime, by the person's attorney acting on the person's behalf and with the person's consent, or by a court-appointed next friend, guardian, or conservator acting on the person's behalf. ~~The board~~ *After a hearing panel has considered an application for executive clemency and has by majority vote favored a hearing, the hearing panel* shall cause an investigation to be made of and base any recommendation it makes on:

(a) all the circumstances surrounding the crime for which the applicant was convicted; ~~and~~

(b) the applicant's criminal record; and

~~(b)~~*(c)* the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(3) ~~The board shall advise the governor and recommend action to be taken. The board~~ *A hearing panel* may recommend that clemency be granted or denied. In noncapital cases, if the ~~board~~ *hearing panel* recommends that clemency be denied, the application may not be forwarded to the governor and the governor may not take action on the case. In capital cases, the ~~board~~ *hearing panel* shall

transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the ~~board~~ *hearing panel*, but the governor shall review the record of the hearing and the ~~board's~~ *hearing panel's* recommendation before granting or denying clemency. The governor has the final authority to grant or deny clemency in those cases forwarded to the governor. An appeal may not be taken from the governor's decision to grant or deny clemency."

Section 11. Section 46-23-302, MCA, is amended to read:

"46-23-302. Order for hearing on application for executive clemency. After ~~the board~~ *a hearing panel* has considered an application for executive clemency and has by majority vote favored a hearing, it shall pass an order in substance as follows:

"Whereas, the Board of Pardons and Parole has officially received an application for executive clemency concerning ...., a convict confined in the state prison (or concerning ...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of.... committed at ...., in the county of ...., State of Montana, on the .... day of ...., 20..., and sentenced for a term of .... years.

Therefore, it is ordered that ...., the .... day of ...., 20..., is set for the consideration of the executive clemency matter and all persons having an interest in the matter who desire to be heard either for or against the granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture are notified to be present at .... o'clock of that day, at .....

Further, it is ordered that a copy of this order be printed and published in the.... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at ...., in the county of ...., once each week for 2 weeks beginning ...., 20..., and ending ....."

Section 12. Section 46-23-306, MCA, is amended to read:

"46-23-306. Record of hearing. At the hearing, the ~~board~~ *hearing panel* must cause to be kept a record showing:

(1) the names of all persons appearing before the ~~board~~ *hearing panel* on behalf of the person seeking clemency from the governor;

(2) the names of all persons appearing before the ~~board~~ *hearing panel* in opposition to the granting of the same;

(3) the testimony of all persons giving evidence before the ~~board~~ *hearing panel*;

(4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing."

Section 13. Section 46-23-307, MCA, is amended to read:

"46-23-307. Decision of board. Within 30 days after the hearing of any capital case or in noncapital cases where the decision is made to recommend clemency be granted, the ~~board~~ *hearing panel* must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor."

Section 14. Section 46-23-1025, MCA, is amended to read:

"46-23-1025. Report to and action by board. (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated

a condition of parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report must be accompanied by the findings of the hearings officer.

(2) Upon receipt of a report, the board shall cause the prisoner to be promptly brought before a hearing panel for a hearing on the violation charged under rules that the board may adopt. If the violation is established, the hearing panel may continue or revoke the parole or may enter an order as it sees fit.

(3) If the prisoner has violated a condition of release requiring the payment of restitution, the ~~board~~ *supervising parole officer* shall notify the victim of the offense prior to the hearing required by ~~subsection (2)~~ *46-23-1024* and give the victim an opportunity to ~~be heard~~ *provide written or oral comment*.

(4) If the hearing panel finds that because of circumstances beyond the prisoner's control the prisoner is unable to make the required restitution payments, the hearing panel may not revoke the prisoner's parole for failure to pay restitution. The hearing panel may modify the time or method of making restitution and may extend the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the prisoner.

~~(4)~~*(5)* If the hearing panel determines that the prisoner has violated the provisions of release, the hearing panel shall determine ~~whether the time from the issuing of the warrant to the date of the prisoner's return to the custody of Montana law enforcement, the department, or the department's agent or any part of the time will be counted as time served under the sentence~~ *the amount of time, if any, that will be counted as time served while the prisoner was in violation of the provisions of release*."

Section 15. Effective date. [This act] is effective July 1, 2011.

Section 16. Implementation — staggered terms. A person serving on the board of pardons and parole as an auxiliary member on [the effective date of this act] becomes a regular board member on [the effective date of this act] and shall serve as a regular board member for the unexpired portion of the term to which the person was initially appointed as an auxiliary member.

Section 17. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to applications made to the board on or before [the effective date of this act] and that are pending decision on [the effective date of this act].

Approved April 1, 2011

CHAPTER NO. 103

[HB 254]

AN ACT REVISING MOTOR CLUB SERVICE LAWS; EXEMPTING CERTAIN AGENTS AND COMPANIES FROM CERTAIN LICENSING REQUIREMENTS; AMENDING SECTION 61-12-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-314, MCA, is amended to read:

"61-12-314. Applicability. This part does not apply to*:*

(1) a duly authorized attorney at law acting in the usual course of the profession ~~or to any~~*;*

(2) an insurance company, bonding company, or surety company licensed and doing business as the licensed company under the laws of the state*; or*

(3) a company or agent that contracts with a motor club service company licensed under this part to provide emergency road service or towing service to the company's or agent's customers."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2011

CHAPTER NO. 104

[HB 259]

AN ACT REQUIRING THE DRIVER OF A VEHICLE ON A HIGHWAY THAT INTERSECTS ANOTHER HIGHWAY WITHOUT CROSSING IT TO YIELD THE RIGHT-OF-WAY; AND AMENDING SECTION 61-8-339, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-339, MCA, is amended to read:

"61-8-339. Vehicle approaching or entering intersection. (1) *(a)* ~~When~~ *Except as provided in subsection (1)(b), when* two or more vehicles enter or approach an intersection from different highways, the driver of the vehicle on the left shall yield the right-of-way to all vehicles approaching from the right that are close enough to constitute an immediate hazard.

(b) The driver of a vehicle on a highway that intersects another highway without crossing it shall yield the right-of-way to all vehicles approaching from the other highway that are close enough to constitute an immediate hazard.

(2) The right-of-way rule declared in subsection (1) is modified at through highways and otherwise as stated in this chapter."

Approved April 1, 2011

CHAPTER NO. 105

[HB 270]

AN ACT ESTABLISHING THE HIGHWAY PATROL OFFICER MICHAEL W. HAYNES MEMORIAL HIGHWAY; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Michael W. Haynes proudly and honorably served the citizens of the great state of Montana as a Highway Patrol Trooper and had an exemplary service record; and

WHEREAS, Michael saved many lives during his service while being one of the top enforcers of violations that take many of our citizens, specifically driving under the influence; and

WHEREAS, we honor his final sacrifice, possibly saving some other innocent victim, and his final duty to the citizens of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Highway patrol officer Michael W. Haynes memorial highway. (1) There is established the highway patrol officer Michael W. Haynes memorial highway on the existing U.S. highway 93 from the

intersection with Montana highway 82 to the southern boundary of the city of Kalispell.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2011

CHAPTER NO. 106

[HB 273]

AN ACT ALLOWING FOR THE OPERATION OF OFF-HIGHWAY VEHICLES ON CERTAIN PUBLIC ROADS WHEN AUTHORIZED BY A LOCAL GOVERNMENT OR THE STATE HIGHWAY PATROL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Operation on public roads, streets, and highways. (1) A person may operate an off-highway vehicle on a controlled-access highway or facility only if the vehicle is registered and licensed under 61-3-301 and the operator possesses a license to drive the vehicle issued under Title 61, chapter 5.

(2) Off-highway vehicle operation is permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality only if:

(a) the operator has received permission or is otherwise authorized for that travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or

(b) operation is authorized on municipal streets by municipal ordinance.

(3) An off-highway vehicle may not be operated as allowed under subsection (2) unless it is equipped with at least one headlamp and one taillamp, which must be lighted at all times during operation, and unless it is equipped with a suitable braking device operable by either hand or foot.

(4) (a) Except as provided in subsection (4)(b), a person who operates an off-highway vehicle when allowed under subsection (2) must have in the person's possession a license to drive a motor vehicle issued under Title 61, chapter 5.

(b) An operator is exempt from the requirement to possess a license when operating an off-highway vehicle as allowed under subsection (2) if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of operation of the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license to drive a motor vehicle.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 2, part 8, and the provisions of Title 23, chapter 2, part 8, apply to [section 1].

Approved April 1, 2011

CHAPTER NO. 107

[HB 293]

AN ACT PROVIDING THAT THE PROPERTY TAX EXEMPTION FOR VETERANS' ORGANIZATIONS EXTENDS TO LAND OWNED BY THE ORGANIZATION CONTINUOUSLY SINCE 1960; AMENDING SECTION 15-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-203, MCA, is amended to read:

"15-6-203. Veterans' ***exemptions*** **— clubhouse** ~~**exemption**~~ **—** ***land*** **— incompetent veterans' trusts.** (1) *(a)* A clubhouse*,* ~~or~~ building*, or land* erected by or belonging to any society or organization of honorably discharged United States military personnel that is used primarily for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit~~, together with the personal property necessarily used in the building,~~ is exempt from taxation.

(b) The *clubhouse or building* exemption provided for in this section applies*:*

(i) to the personal property necessarily used in the building; and

(ii) even if a business, intended primarily for the use of the members, is required to be open to the public and is operated in a portion of the building.

(c) The land exemption provided for in this section applies only to land owned by the society or organization continuously since January 1, 1960.

(2) All property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of the veterans, when the property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, is exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in the minor's own right on account of removal of legal disability."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010.

Approved April 1, 2011

CHAPTER NO. 108

[HB 348]

AN ACT PROVIDING AN ALTERNATE SOURCE FOR AN OUTDATED REFERENCE TO INTEREST RATES BASED ON THE PRIME RATE; AMENDING SECTIONS 7-8-2304, 31-1-107, AND 33-3-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE AND APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2304, MCA, is amended to read:

"7-8-2304. Terms for sale of tax-deed land. (1) A sale must be made for cash or, in the case of real property, on terms that the board of county commissioners approves.

(2) (a) If the sale is made on terms, at least 20% of the purchase price must be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at a rate established by the board of county commissioners. The rate may not exceed more than 4 percentage points a year above the prime rate ~~of major New York banks, as published in the Wall Street Journal~~ *published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans dated* within 7 days prior to the date of sale.

(b) If a sale is made on terms, the presiding officer of the board shall execute a contract containing the terms that are provided by a contract approved by the department of revenue."

Section 2. Section 31-1-107, MCA, is amended to read:

"31-1-107. Interest rate allowed by agreement. (1) Parties may agree in writing ~~for~~ *to* the payment of any rate of interest that does not exceed the greater of 15% or an amount that is 6 percentage points per ~~annum~~ *year* above the prime rate ~~of major New York banks, as published in the Wall Street Journal edition~~ *published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans* dated 3 business days prior to the execution of the agreement. Interest must be allowed according to the terms of the agreement.

(2) A loan that is not usurious when made is lawful for the duration of the loan, provided the loan agreement is not substantially changed. This subsection does not apply to loan renewals.

(3) The provisions of this section do not apply to regulated lenders as defined in 31-1-111."

Section 3. Section 33-3-431, MCA, is amended to read:

"33-3-431. Borrowed surplus. (1) A domestic stock or mutual insurer may borrow money to defray the expenses of the insurer's organization, to provide the insurer with surplus funds, or for any purpose of the insurer's business upon a written agreement that the money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. The agreement may provide for interest at a rate not to exceed the greater of the rate established in 25-9-205 or a rate that is 6 percentage points per year higher than the prime rate ~~of major New York banks as published in the Wall Street Journal edition~~ *published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans* dated 3 business days prior to the execution of the agreement. The agreement must specify whether the interest constitutes a liability of the insurer. A commission or promotion expense may not be paid in connection with a loan of the type described in this section.

(2) Money borrowed, together with the interest if stipulated in the agreement, does not form a part of the insurer's legal liabilities except as to the insurer's surplus in excess of the amount stipulated in the agreement or the basis of any setoff. However, until the money or interest, or both, are repaid, financial statements filed or published by the insurer must show as a footnote the amount then unpaid together with any interest accrued but unpaid.

(3) A loan of this type to a mutual or stock insurer is subject to the commissioner's approval. The insurer shall, in advance of the loan, file with the

commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement are approved unless within 15 days after filing the insurer is notified of the commissioner's disapproval and reasons for the disapproval. The commissioner shall disapprove any proposed loan or agreement if the commissioner finds the loan is unnecessary or excessive for the purpose intended or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the insurer, or that the information filed by the insurer is inadequate.

(4) A loan to a mutual or stock insurer or a substantial portion of the loan must be repaid by the insurer when the loan is no longer reasonably necessary for the purpose originally intended. Repayment of either principal or interest on the loan may not be made by a mutual or stock insurer unless approved in advance by the commissioner.

(5) This section does not apply to loans obtained by the insurer in the ordinary course of business from banks and other financial institutions or to loans secured by pledge or mortgage of assets."

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to all interest rate agreements governed by 7-8-2304, 31-1-107, or 33-3-431 made on or after [the effective date of this act].

Approved April 1, 2011

CHAPTER NO. 109

[HB 374]

AN ACT REVISING LAWS RELATING TO POWERS OF ATTORNEY; ADOPTING THE UNIFORM POWER OF ATTORNEY ACT TO REPLACE THE STATUTORY FORM POWER OF ATTORNEY ACT; PROVIDING CAUSES OF ACTION AND PENALTIES FOR THE INTENTIONAL DISSIPATION OF AN ESTATE THROUGH THE USE OF A POWER OF ATTORNEY; AMENDING SECTIONS 72-3-917, 72-5-501, 72-5-502, 72-31-222, 72-31-223, 72-31-224, 72-31-225, 72-31-226, 72-31-227, 72-31-228, 72-31-229, 72-31-230, 72-31-231, 72-31-232, 72-31-233, 72-31-234, 72-31-235, 72-31-236, AND 72-31-238, MCA; AND REPEALING SECTIONS 72-31-201 AND 72-31-237, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. This part may be cited as the "Uniform Power of Attorney Act".

Section 2. Definitions. As used in this part, the following definitions apply:

(1) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated.

(2) "Durable", with respect to a power of attorney, means not terminated by the principal's incapacity.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Good faith" means honesty in fact.

(5) "Incapacity" means inability of an individual to manage property or business affairs because the individual:

(a) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(b) is:

(i) missing; or

(ii) outside the United States and unable to return.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(8) (a) "Presently exercisable general power of appointment", with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period.

(b) The term does not include a power exercisable in a fiduciary capacity or only by will.

(9) "Principal" means an individual who grants authority to an agent in a power of attorney.

(10) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(11) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

Section 3. Applicability. This part applies to all powers of attorney except:

(1) a power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(2) a power to make health care decisions;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

(4) a power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

Section 4. Execution of power of attorney. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

Section 5. Validity of power of attorney. (1) A power of attorney executed in this state on or after [the effective date of this act] is valid if its execution complies with [section 4].

(2) A power of attorney executed in this state before [the effective date of this act] is valid if its execution complied with the law of this state as it existed at the time of execution.

(3) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(a) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to [section 6]; or

(b) the requirements for a military power of attorney pursuant to 10 U.S.C. 1044b.

(4) Except as otherwise provided by statute other than this part, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

Section 6. Meaning and effect of power of attorney. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

Section 7. Nomination of conservator or guardian — relation of agent to court-appointed fiduciary. (1) In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(2) If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

Section 8. When power of attorney effective. (1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the

principal is incapacitated or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(a) a physician that the principal is incapacitated within the meaning of [section 2(5)(a)]; or

(b) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of [section 2(5)(b)].

(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, et seq., and applicable regulations to obtain access to the principal's health care information and communicate with the principal's health care provider.

Section 9. Termination of power of attorney or agent's authority. (1) A power of attorney terminates when:

(a) the principal dies;

(b) the principal becomes incapacitated if the power of attorney is not durable;

(c) the principal revokes the power of attorney;

(d) the power of attorney provides that it terminates;

(e) the purpose of the power of attorney is accomplished; or

(f) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns and the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent's authority terminates when:

(a) the principal revokes the authority;

(b) the agent dies, becomes incapacitated, or resigns;

(c) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation unless the power of attorney otherwise provides; or

(d) the power of attorney terminates.

(3) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (2), notwithstanding a lapse of time since the execution of the power of attorney.

(4) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(5) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

Section 10. Coagents or successor agents. (1) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

(a) has the same authority as that granted to the original agent; and

(b) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except as otherwise provided in the power of attorney and subsection (4), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(4) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken the action.

Section 11. Reimbursement and compensation of agent. Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

Section 12. Agent's acceptance. Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

Section 13. Agent's duties. (1) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(a) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(b) act in good faith; and

(c) act only within the scope of authority granted in the power of attorney.

(2) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(a) act loyally for the principal's benefit;

(b) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(c) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

(d) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(e) cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and

(f) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(i) the value and nature of the principal's property;

(ii) the principal's foreseeable obligations and need for maintenance;

(iii) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and

(iv) eligibility for a benefit, a program, or assistance under a statute or regulation.

(3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(4) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(7) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

Section 14. Exoneration of agent. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(2) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

Section 15. Judicial relief. (1) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(a) the principal or the agent;

(b) a guardian, conservator, or other fiduciary acting for the principal;

(c) a person authorized to make health care decisions for the principal;

(d) the principal's spouse, parent, or descendant;

(e) an individual who would qualify as a presumptive heir of the principal;

(f) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(g) a governmental agency having regulatory authority to protect the welfare of the principal;

(h) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(i) a person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under this section unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

Section 16. Agent's liability. An agent that violates this part is liable to the principal or the principal's successors in interest for the amount required to:

(1) restore the value of the principal's property to what it would have been had the violation not occurred; and

(2) reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

Section 17. Agent's resignation — notice. Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

(1) to the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

(2) if there is no person described in subsection (1), to:

(a) the principal's caregiver;

(b) another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(c) a governmental agency having authority to protect the welfare of the principal.

Section 18. Acceptance of and reliance upon acknowledged power of attorney. (1) For purposes of [section 19] and this section, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

(2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under [section 4] that the signature is genuine.

(3) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

(4) A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

(a) an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;

(b) an English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

(c) an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

(5) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance.

(6) For purposes of [section 19] and this section, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

Section 19. Liability for refusal to accept acknowledged power of attorney. (1) Except as otherwise provided in subsection (2):

(a) a person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under [section 18(4)] no later than 7 business days after presentation of the power of attorney for acceptance;

(b) if a person requests a certification, a translation, or an opinion of counsel under [section 18(4)], the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation, or opinion of counsel; and

(c) a person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(c) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) a request for a certification, a translation, or an opinion of counsel under [section 18(4)] is refused;

(e) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under [section 18(4)] has been requested or provided; or

(f) the person makes or has actual knowledge that another person has made a report to the local office of the department of public health and human services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(3) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

(a) a court order mandating acceptance of the power of attorney; and

(b) liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

Section 20. Principles of law and equity. Unless displaced by a provision of this part, the principles of law and equity supplement this part.

Section 21. Laws applicable to financial institutions and entities. This part does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this part.

Section 22. Remedies under other law. The remedies under this part are not exclusive and do not abrogate any right or remedy under the law of this state other than this part.

Section 23. Authority that requires specific grant — grant of general authority. (1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(a) create, amend, revoke, or terminate an inter vivos trust;

(b) make a gift;

(c) create or change rights of survivorship;

(d) create or change a beneficiary designation;

(e) delegate authority granted under the power of attorney;

(f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(g) exercise fiduciary powers that the principal has authority to delegate; or

(h) disclaim property, including a power of appointment.

(2) Notwithstanding a grant of authority to do an act described in subsection (1), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent or in an individual to whom the agent owes a legal obligation of support an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(3) Subject to subsections (1), (2), (4), and (5), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in 72-31-224 through 72-31-236.

(4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to [section 43].

(5) Subject to subsections (1), (2), and (4), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(7) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

Section 24. Incorporation of authority. (1) An agent has authority described in 72-31-224 through 72-31-236, [sections 23 and 43], and this section if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in 72-31-224 through 72-31-236 and [section 43] or cites the section in which the authority is described.

(2) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in 72-31-224 through 72-31-236 and [section 43] or a citation to a section of 72-31-224 through 72-31-236 and [section 43] incorporates the entire section as if it were set out in full in the power of attorney.

(3) A principal may modify authority incorporated by reference.

Section 25. Section 72-3-917, MCA, is amended to read:

"72-3-917. Distribution to person under disability. (1) A personal representative may discharge the personal representative's obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to a minor or person under other disability as authorized by 72-5-104~~,~~ ~~72-5-501,~~ or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of the disabled person, but the receiving person may not accept any pay except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."

Section 26. Section 72-5-501, MCA, is amended to read:

"72-5-501. When *health care* power of attorney not affected by disability. (1) A durable *health care* power of attorney is a power of attorney by which a principal designates another as the principal's attorney-in-fact or agent in writing and the writing contains the words, "This *health care* power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time" or "This *health care* power of attorney becomes effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred must be exercisable notwithstanding the principal's subsequent disability or incapacity and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. ~~All acts done by the attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.~~

(2) If a ~~conservator~~ *guardian* is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the ~~conservator~~ *guardian* as well as the principal. The ~~conservator~~ *guardian* has the same power to revoke or amend the *health care* power of attorney that the principal would have had if the principal were not disabled or incapacitated. A principal may nominate, by a durable *health care* power of attorney, the ~~conservator of the principal's estate or~~ guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable *health care* power of attorney except for good cause or disqualification."

Section 27. Section 72-5-502, MCA, is amended to read:

"72-5-502. ~~Power~~ *Health care power* of attorney not revoked until notice. ~~(1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. Any action taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal.~~

~~(2)~~*(1)* The disability or incapacity of a principal who has previously executed a *health care* power of attorney that is not a durable *health care* power does not revoke or terminate the agency as to the attorney-in-fact or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. ~~Any action taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.~~

~~(3)~~*(2)* As to acts undertaken in good faith reliance on a *health care* power of attorney, an affidavit executed by the attorney-in-fact or agent stating that the attorney-in-fact or agent did not have, at the time of exercising the power, actual knowledge of the termination of the power by revocation or of the principal's ~~death,~~ disability~~,~~ or incapacity is ~~conclusive~~ proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable.

~~(4)~~*(3)* This section does not affect any provision in a *health care* power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity."

Section 28. Section 72-31-222, MCA, is amended to read:

"72-31-222. ~~Durable power~~ *Power* of attorney *is durable.* A power of attorney ~~legally sufficient~~ *created* under this part is durable ~~to the extent that durable powers are permitted by other law of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent." showing the intent of the principal that the power granted may be exercised notwithstanding later disability,~~ *unless it expressly provides that it is terminated by the* incapacity~~, or incompetency~~ *of the principal*."

Section 29. Section 72-31-223, MCA, is amended to read:

"72-31-223. Construction of ~~powers~~ *authority* generally. ~~By~~ *Except as otherwise provided in the power of attorney, by* executing a ~~statutory~~ power of attorney ~~with respect to~~ *that incorporates* a subject ~~listed~~ *described* in ~~72-31-201(1)~~ *72-31-224 through 72-31-236 and [section 43] or that grants to an agent authority to do all acts that a principal could do pursuant to [section*

23(3)], ~~the~~ *a* principal~~, except as limited or extended by the principal in the power of attorney, empowers~~ *authorizes* the agent*,* ~~for~~ *with respect to* that subject*,* to:

(1) demand, receive, and obtain, by litigation or otherwise, money or ~~other~~ *another* thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, *cancel, terminate,* reform, *restate,* release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, *file,* and ~~deliver a deed, revocation, mortgage, lease, notice, check, release, or other~~ *record any* instrument *or communication* the agent considers desirable to accomplish a purpose of a transaction*, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney*;

(4) ~~prosecute, defend~~ *initiate, participate in*, submit to ~~arbitration~~ *alternative dispute resolution*, settle, ~~and~~ *oppose, or* propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court *or other governmental agency* to carry out an act authorized by the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, *discretionary investment manager,* expert witness, or other ~~assistant~~ *advisor*;

~~(7) keep appropriate records of each transaction, including an accounting of receipts and disbursements;~~

~~(8)~~*(7)* prepare, execute, and file a record, report, or other document ~~the agent considers desirable~~ to safeguard or promote the principal's interest under a statute or ~~governmental~~ regulation;

~~(9) reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and~~

(8) communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality on behalf of the principal;

(9) access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

(10) ~~in general,~~ do any other lawful act with respect to the subject *and all property related to the subject*."

Section 30. Section 72-31-224, MCA, is amended to read:

"72-31-224. ~~Construction of power relating to real~~ *Real* property ~~transactions.~~ ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to real property ~~transactions empowers~~ *authorizes* the agent to:

(1) *demand, buy, lease, receive,* accept as a gift or as security for ~~a loan~~ *an extension of credit*, ~~reject, demand, buy, lease, receive,~~ or otherwise acquire *or reject* an interest in real property or a right incident to real property;

(2) sell, exchange, ~~or~~ convey, with or without covenants*, representations, or warranties*; quitclaim; release; surrender; ~~mortgage~~ *retain title for security*; encumber; partition; consent to partitioning; *subject to an easement or covenant;* subdivide; apply for zoning~~, rezoning,~~ or other governmental permits; plat or

consent to platting; develop; grant ~~options~~ *an option* concerning; lease; ~~sublet~~ *sublease*; *contribute to an entity in exchange for an interest in that entity;* or otherwise *grant or* dispose of an interest in real property or a right incident to real property;

(3) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

~~(3)~~*(4)* release, assign, satisfy, ~~and~~ *or* enforce, by litigation or otherwise, a mortgage, deed of trust, *conditional sale contract,* encumbrance, lien, or other claim to real property that exists or is asserted;

~~(4)~~*(5)* ~~do any act of management or of conservation with respect to~~ *manage or conserve* an interest in real property or a right incident to real property, owned or claimed to be owned by the principal, including:

(a) insuring against a ~~casualty,~~ liability~~,~~ or *casualty or other* loss;

(b) obtaining or regaining possession or protecting the interest or right, by litigation or otherwise;

(c) paying, *assessing,* compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(d) purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

~~(5)~~*(6)* use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has or claims to have an interest or right;

~~(6)~~*(7)* participate in a reorganization with respect to real property or ~~a legal~~ *an* entity that owns an interest in or right incident to real property and receive*,* ~~and~~ hold*, and act with respect to* ~~shares of stock or obligations~~ *stocks and bonds or other property* received in a plan of reorganization ~~and to act with respect to them~~, including:

(a) selling or otherwise disposing of them;

(b) exercising or selling an option, *right of* conversion, or similar right with respect to them; and

(c) *exercising any* voting ~~them~~ *rights* in person or by proxy;

~~(7)~~*(8)* change the form of title of an interest in or right incident to real property; *and*

~~(8)~~*(9)* dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest."

Section 31. Section 72-31-225, MCA, is amended to read:

"72-31-225. ~~Construction of power relating to tangible~~ *Tangible* personal property ~~transactions.~~ ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to tangible personal property ~~transactions empowers~~ *authorizes* the agent to:

(1) *demand, buy, receive,* accept as a gift or as security for ~~a loan, reject, demand, buy, receive~~ *an extension of credit*, or otherwise acquire *or reject* ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, *representations, or warranties, quitclaim,* release, surrender, ~~mortgage, encumber, pledge, hypothecate,~~ create a security interest in, ~~pawn,~~ grant options concerning,

lease, sublease ~~to others~~, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

~~(3)~~*(4)* release, assign, satisfy, or enforce, by litigation or otherwise, a ~~mortgage,~~ security interest, ~~encumbrance,~~ lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; ~~and~~

~~(4)~~*(5)* ~~do an act of management or conservation with respect to~~ *manage or conserve* tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(a) insuring against ~~casualty,~~ liability~~,~~ or *casualty or other* loss;

(b) obtaining or regaining possession or protecting the property or interest, by litigation or otherwise;

(c) paying, *assessing,* compromising*,* or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(d) moving *the property* from place to place;

(e) storing *the property* for hire or on *a* gratuitous bailment; and

(f) using~~, altering,~~ and making repairs*,* ~~or~~ alterations*, or improvements to the property; and*

(6) change the form of title of an interest in tangible personal property."

Section 32. Section 72-31-226, MCA, is amended to read:

"72-31-226. ~~Construction of power relating to stock and bond transactions~~ *Stocks and bonds.* ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to ~~stock and bond transactions empowers~~ *stocks and bonds authorizes* the agent to*:*

(1) buy, sell, and exchange stocks~~,~~ *and* bonds~~, mutual funds, and all other types of securities and financial instruments except commodity futures contracts; call and put options on stocks and stock indexes~~;

(2) establish, continue, modify, or terminate an account with respect to stocks and bonds;

(3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(4) receive certificates and other evidences of ownership with respect to ~~securities~~ *stocks and bonds*; *and*

(5) exercise voting rights with respect to ~~securities~~ *stocks and bonds* in person or by proxy~~;~~*,* enter into voting trusts~~;~~*,* and consent to limitations on the right to vote."

Section 33. Section 72-31-227, MCA, is amended to read:

"72-31-227. ~~Construction of power relating to commodity and option transactions~~ *Commodities and options.* ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to ~~commodity and option transactions empowers~~ *commodities and options authorizes* the agent to*:*

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts~~;~~ *and* call ~~and~~ *or* put options on stocks ~~and~~ *or* stock indexes traded on a regulated option exchange; and

(2) establish, continue, modify, and terminate option accounts ~~with a broker~~."

Section 34. Section 72-31-228, MCA, is amended to read:

"72-31-228. ~~Construction of power relating to banking~~ *Banks* and other financial ~~institution transactions~~ *institutions*. ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to ~~banking~~ *banks* and other financial ~~institution transactions empowers~~ *institutions authorizes* the agent to:

(1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) ~~hire~~ *contract for services available from a financial institution, including renting* a safe deposit box or space in a vault;

~~(4) contract to procure other services available from a financial institution as the agent considers desirable;~~

~~(5)~~*(4)* withdraw*,* by check, order, *electronic funds transfer,* or otherwise*,* money or property of the principal deposited with or left in the custody of a financial institution;

~~(6)~~*(5)* receive ~~bank~~ statements *of account*, vouchers, notices, and similar documents from a financial institution and to act with respect to them;

~~(7)~~*(6)* enter a safe deposit box or vault and withdraw or add to the contents;

~~(8)~~*(7)* borrow money ~~at an interest rate agreeable to the agent~~ and pledge as security personal property of the principal necessary ~~in order~~ to borrow~~,~~ *money or* pay, renew, or extend the time of payment of a debt of the principal *or a debt guaranteed by the principal*;

~~(9)~~*(8)* make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order~~;~~*, transfer money,* receive the cash or other proceeds of those transactions~~;~~*,* and accept a draft drawn by a person upon the principal and pay it when due;

~~(10)~~*(9)* receive for the principal and act upon a sight draft, warehouse receipt, *other document of title whether tangible or electronic,* or other negotiable or nonnegotiable instrument;

~~(11)~~*(10)* apply for*,* ~~and~~ receive*, and use* letters of credit, credit *and debit* cards, *electronic transaction authorizations,* and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

~~(12)~~*(11)* consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution."

Section 35. Section 72-31-229, MCA, is amended to read:

"72-31-229. ~~Construction of power relating to~~ *Operation of entity or* business ~~operating transactions~~. ~~In~~ *Subject to the terms of a document or an agreement governing an entity or an entity ownership interest and unless the*

power of attorney otherwise provides, language in a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to *operation of an entity or* business ~~operating transactions empowers~~ *authorizes* the agent *to*:

(1) ~~to~~ operate, buy, sell, enlarge, reduce, and terminate ~~a business~~ *an ownership* interest;

~~(2) to the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement, to:~~

~~(a)~~*(2)* perform a duty or discharge a liability and exercise *in person or by proxy* a right, power, privilege, or option that the principal has, may have, or claims to have ~~under a partnership agreement, whether or not the principal is a partner~~;

~~(b)~~*(3)* enforce the terms of ~~a partnership~~ *an ownership* agreement ~~by litigation or otherwise~~; ~~and~~

~~(c)~~*(4)* ~~defend~~ *initiate, participate in*, submit to ~~arbitration~~ *alternative dispute resolution*, settle, *oppose,* or *propose or accept a* compromise *with respect to* litigation to which the principal is a party because of ~~membership in the partnership~~ *an ownership interest*;

~~(3)~~*(5)* ~~to~~ exercise in person or by proxy or enforce, by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of ~~a bond, share, or other instrument of similar character and to defend,~~ *stocks and bonds;*

(6) initiate, participate in, submit to ~~arbitration~~ *alternative dispute resolution*, settle, *oppose,* or *propose or accept a* compromise *with respect to* litigation to which the principal is a party ~~because of a bond, share, or similar instrument~~ *concerning stocks and bonds*;

~~(4)~~*(7)* with respect to ~~a~~ *an entity or* business owned solely by the principal~~, to~~:

(a) continue, modify, renegotiate, extend, and terminate a contract made ~~with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal~~ *by or* with respect to the *entity or* business before execution of the power of attorney;

(b) determine:

(i) the location of its operation;

(ii) the nature and extent of its business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) the amount and types of insurance carried; *and*

(v) the mode of engaging, compensating, and dealing with its *employees,* accountants, attorneys, ~~and~~ *or* other ~~agents and employees~~ *advisors*;

(c) change the name or form of organization under which the *entity or* business is operated and enter into ~~a partnership~~ *an ownership* agreement with other persons ~~or organize a corporation~~ to take over all or part of the operation of the *entity or* business; and

(d) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the *entity or* business and control and disburse the money in the operation of the *entity or* business;

~~(5)~~*(8)* ~~to~~ put additional capital into ~~a~~ *an entity or* business in which the principal has an interest;

~~(6)~~*(9)* ~~to~~ join in a plan of reorganization, consolidation, *conversion, domestication,* or merger of the *entity or* business;

~~(7)~~*(10)* ~~to~~ sell or liquidate ~~a business~~ *all* or part of ~~it at the time and upon the terms the agent considers desirable~~ *an entity or business*;

~~(8)~~*(11)* ~~to~~ establish the value of ~~a~~ *an entity or* business under a buyout agreement to which the principal is a party;

~~(9)~~*(12)* ~~to~~ prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to ~~a~~ *an entity or* business ~~that are required by a governmental agency or instrumentality or that the agent considers desirable~~ and ~~to~~ make related payments; and

~~(10)~~*(13)* ~~to~~ pay, compromise, or contest taxes*,* ~~or~~ assessments*, fines, or penalties* and ~~to do~~ *perform* any other act ~~that the agent considers desirable~~ to protect the principal from illegal or unnecessary taxation, *assessments,* fines, *or* penalties~~, or assessments~~ with respect to ~~a~~ *an entity or* business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney."

Section 36. Section 72-31-230, MCA, is amended to read:

"72-31-230. ~~Construction of power relating to insurance transactions~~ *Insurance and annuities.* ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to insurance and ~~annuity transactions empowers~~ *annuities authorizes* the agent to:

(1) continue, pay the premium or ~~assessment~~ *make a contribution* on, modify, *exchange,* rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents and ~~to~~ select the amount, type of insurance or annuity, and mode of payment;

(3) pay the premium or ~~assessment~~ *make a contribution* on, modify, *exchange,* rescind, release, or terminate a contract of insurance or annuity procured by the agent;

~~(4) designate the beneficiary of the contract; however, an agent may be named a beneficiary of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;~~

~~(5)~~*(4)* apply for and receive a loan ~~on the security of the~~ *secured by a* contract of insurance or annuity;

~~(6)~~*(5)* surrender and receive the cash surrender value *on a contract of insurance or annuity*;

~~(7)~~*(6)* exercise an election;

(7) exercise investment power available under a contract of insurance or annuity;

(8) change the manner of paying premiums *on a contract of insurance or annuity*;

(9) change or convert the type of insurance ~~contract~~ or annuity~~,~~ with respect to which the principal has or claims to have a power described in this section;

~~(10) change the beneficiary of a contract of insurance or annuity; however, the agent may not be designated a beneficiary except to the extent permitted by subsection (4);~~

~~(11)~~*(10)* apply for and procure ~~government aid~~ *a benefit or assistance under a statute or regulation* to guarantee or pay premiums of a contract of insurance on the life of the principal;

~~(12)~~*(11)* collect, sell, assign, hypothecate, borrow ~~upon~~ *against*, or pledge the interest of the principal in a contract of insurance or annuity; and

~~(13)~~*(12)* pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment."

Section 37. Section 72-31-231, MCA, is amended to read:

"72-31-231. ~~Construction of power relating to estate~~ *Estates*, ~~trust~~ *trusts*, and other ~~beneficiary transactions~~ *beneficial interests.* *(1) In this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.*

(2) Unless the power of attorney otherwise provides, language in ~~In~~ a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to *an* estate, trust, ~~and~~ *or* other ~~beneficiary transactions~~ *beneficial interest*~~, empowers~~ *authorizes* the agent to ~~act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled as a beneficiary to a share or payment, including to~~:

~~(1)~~*(a)* accept, ~~reject, disclaim,~~ receive, receipt for, sell, assign, ~~release,~~ pledge, *or* exchange~~, or consent to a reduction in or modification of~~ a share in or payment from the fund;

~~(2)~~*(b)* demand or obtain~~, by litigation or otherwise,~~ money or ~~other~~ *another* thing of value to which the principal is, may become, or claims to be entitled by reason of the fund*, by litigation or otherwise*;

(c) exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

~~(3)~~*(d)* initiate, participate in, *submit to alternative dispute resolution, settle,* ~~and~~ oppose*, or propose or accept a compromise with respect to* litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

~~(4)~~*(e)* initiate, participate in, *submit to alternative dispute resolution, settle,* ~~and~~ oppose*, or propose or accept a compromise with respect to* litigation to remove, substitute, or surcharge a fiduciary;

~~(5)~~*(f)* conserve, invest, disburse, ~~and~~ *or* use anything received for an authorized purpose; and

~~(6)~~*(g)* transfer an interest of the principal in real property, stocks~~,~~ *and* bonds, accounts with financial institutions *or securities intermediaries*, insurance, *annuities,* and other property to the trustee of a revocable trust created by the principal as settlor."

Section 38. Section 72-31-232, MCA, is amended to read:

"72-31-232. ~~Construction of power relating to claims~~ *Claims* and litigation. ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ *granting general authority* with respect to claims and litigation ~~empowers~~ *authorizes* the agent to:

(1) assert and ~~prosecute~~ *maintain* before a court or administrative agency a claim, *claim for relief, cause of action,* counterclaim, ~~or~~ offset, *recoupment, or*

defense, ~~and defend against an individual, a legal entity, or government,~~ including ~~suits~~ *an action* to recover property or other thing of value, ~~to~~ recover damages sustained by the principal, ~~to~~ eliminate or modify tax liability, or ~~to~~ seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims~~,~~ *or* intervene *or otherwise participate* in litigation~~, and act as amicus curiae~~;

(3) ~~in connection with litigation, procure~~ *seek* an attachment, garnishment, ~~libel,~~ order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) ~~in connection with litigation, perform any lawful act, including acceptance of~~ *make or accept a* tender, offer of judgment, *or* admission of facts, ~~submission of~~ *submit* a controversy on an agreed statement of facts, consent to examination ~~before trial~~, and ~~binding~~ *bind* the principal in litigation;

(5) submit to ~~arbitration~~ *alternative dispute resolution*, settle, and propose or accept a compromise ~~with respect to a claim or litigation~~;

(6) waive the issuance and service of process upon the principal~~;~~*,* accept service of process~~;~~*,* appear for the principal~~;~~*,* designate persons upon ~~whom~~ *which* process directed to the principal may be served~~;~~*,* execute and file or deliver stipulations on the principal's behalf~~;~~*,* verify pleadings~~;~~*,* seek appellate review~~;~~*,* procure and give surety and indemnity bonds~~;~~*,* contract and pay for the preparation and printing of records and briefs~~;~~*,* and receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) act for the principal with respect to bankruptcy or insolvency ~~proceedings~~, whether voluntary or involuntary, concerning the principal or some other person, *or* with respect to a reorganization*,* ~~proceeding or a~~ receivership*,* or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value; ~~and~~

(8) pay a judgment*, award, or order* against the principal or a settlement made in connection with *a claim or* litigation*;* and

(9) receive ~~and conserve~~ money or other thing of value paid in settlement of or as proceeds of a claim or litigation."

Section 39. Section 72-31-233, MCA, is amended to read:

"72-31-233. ~~Construction of power relating to personal~~ *Personal* and family maintenance. *(1)* ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to personal and family maintenance ~~empowers~~ *authorizes* the agent to:

~~(1)~~*(a)* ~~do~~ *perform* the acts necessary to maintain the customary standard of living of the principal and the ~~principal's spouse, children, and other~~ *following* individuals*, whether living when the power of attorney is executed or later born:*

(i) the principal's children;

(ii) other individuals ~~customarily or~~ legally entitled to be supported by the principal~~,~~*; and*

(iii) the individuals whom the principal has customarily supported or indicated the intent to support;

(b) make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(c) ~~including providing~~ *provide* living quarters *for the individuals described in subsection (1)(a)* by*:*

(i) purchase, lease, or other contract*;* or

(ii) paying the operating costs, including interest, amortization payments, repairs, and taxes, on premises owned by the principal ~~and~~ *or* occupied by those individuals;

~~(2)~~*(d)* provide for ~~the individuals described in subsection (1)~~ normal domestic help~~;~~*,* usual vacations and ~~usual~~ travel expenses~~;~~*,* and funds for shelter, clothing, food, appropriate education, *including postsecondary and vocational education,* and other current living costs *for the individuals described in subsection (1)(a)*;

~~(3)~~*(e)* pay ~~for the individuals described in subsection (1)~~ *expenses for* necessary ~~medical, dental, and surgical~~ *health* care~~, hospitalization,~~ and custodial care *for the individuals described in subsection (1)(a)*;

(f) act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, et seq., and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

~~(4)~~*(g)* continue any provision made by the principal ~~for the individuals described in subsection (1)~~ for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them*, for the individuals described in subsection (1)(a)*;

~~(5)~~*(h)* maintain ~~or open charge~~ *credit and debit* accounts for the convenience of the individuals described in subsection (1)*(a)* and open new accounts ~~the agent considers desirable to accomplish a lawful purpose~~; and

~~(6)~~*(i)* continue payments incidental to the membership or affiliation of the principal in a ~~church~~ *religious institution*, club, society, order, or other organization or continue contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon nor limited by authority that an agent may or may not have with respect to gifts under this part."

Section 40. Section 72-31-234, MCA, is amended to read:

"72-31-234. ~~Construction of power relating to benefits from social security, medicare, medicaid, or other~~ *Benefits from* governmental programs or ~~from~~ *civil or* military service. *(1) In this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation, including social security, medicare, and medicaid.*

(2) ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to benefits from ~~social security, medicare, medicaid or other~~ governmental programs or ~~from~~ civil or military service ~~empowers~~ *authorizes* the agent to:

~~(1)~~*(a)* execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in 72-31-233(1)*(a)*, and for shipment of their household effects;

~~(2)~~*(b)* take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(c) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

~~(3)~~*(d)* prepare, file, and ~~prosecute~~ *maintain* a claim of the principal ~~to~~ *for* a benefit or assistance, financial or otherwise, to which the principal ~~claims to~~ *may* be entitled~~,~~ *to receive* under a statute or ~~governmental~~ regulation;

~~(4)~~*(e)* ~~prosecute~~ *initiate*, ~~defend~~ *participate in*, submit to ~~arbitration~~ *alternative dispute resolution*, settle, *oppose,* ~~and~~ *or* propose or accept a compromise with respect to *litigation concerning* any ~~benefits~~ *benefit or assistance* the principal may be entitled to receive *under a statute or regulation*; and

~~(5)~~*(f)* receive the financial proceeds of a claim ~~of the type~~ described in ~~this section~~ *subsection (2)(d)* and conserve, invest, disburse, or use *for a lawful purpose* anything *so* received ~~for a lawful purpose~~."

Section 41. Section 72-31-235, MCA, is amended to read:

"72-31-235. ~~Construction of power relating to retirement plan transactions~~ *Retirement plans.* *(1) In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:*

(a) an individual retirement account under section 408 of the Internal Revenue Code, 26 U.S.C. 408;

(b) a Roth individual retirement account under section 408A of the Internal Revenue Code, 26 U.S.C. 408A;

(c) a deemed individual retirement account under section 408(q) of the Internal Revenue Code, 26 U.S.C. 408(q);

(d) an annuity or mutual fund custodial account under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(f) a deferred compensation plan under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b); and

(g) a nonqualified deferred compensation plan under section 409A of the Internal Revenue Code, 26 U.S.C. 409A.

(2) ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to retirement ~~plan transactions empowers~~ *plans authorizes* the agent to:

~~(1)~~*(a)* select ~~payment options~~ *the form and timing of payments* under ~~any~~ *a* retirement plan ~~in which the principal participates, including plans for self-employed individuals~~ *and withdraw benefits from a plan*;

~~(2) designate beneficiaries under those plans and change existing designations;~~

~~(3) make voluntary contributions to those plans;~~

~~(4) exercise the investment powers available under any self-directed retirement plan;~~

~~(5)~~*(b)* make ~~"rollovers"~~ *a rollover, including a direct trustee-to-trustee rollover,* of ~~plan~~ benefits ~~into other~~ *from one* retirement ~~plans~~ *plan to another*;

(c) establish a retirement plan in the principal's name;

(d) make contributions to a retirement plan;

(e) exercise investment powers available under a retirement plan; and

~~(6)~~*(f)* ~~if authorized by the plan,~~ borrow from, sell assets to, and purchase assets from ~~the~~ *a retirement* plan~~; and~~

~~(7) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed~~."

Section 42. Section 72-31-236, MCA, is amended to read:

"72-31-236. ~~Construction of power relating to tax matters~~ *Taxes.* ~~In~~ *Unless the power of attorney otherwise provides, language in* a ~~statutory~~ power of attorney~~, the language~~ granting ~~power~~ *general authority* with respect to ~~tax matters empowers~~ *taxes authorizes* the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, *property,* Federal Insurance Contributions Act, and other tax returns~~;~~*,* claims for refunds~~;~~*,* requests for extension of time~~;~~*,* petitions regarding tax matters~~;~~*,* and ~~any~~ other tax-related documents, including receipts, offers, waivers, consents*,* ~~(~~including consents and agreements under *section 2032A of the* Internal Revenue Code*, 26 U.S.C. 2032A* ~~section 2032A or any successor section)~~, closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service ~~and any~~ *or* other taxing authority."

Section 43. Gifts. (1) In this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act, Title 72, chapter 26, and a tuition savings account or prepaid tuition plan under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(2) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(a) make outright to or for the benefit of a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under section 2503(b) of the Internal Revenue Code, 26 U.S.C. 2503(b), without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(b) consent, pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, to the splitting of a gift made by the principal's spouse in an amount

per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(3) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

(a) the value and nature of the principal's property;

(b) the principal's foreseeable obligations and need for maintenance;

(c) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

(d) eligibility for a benefit, a program, or assistance under a statute or regulation; and

(e) the principal's personal history of making or joining in making gifts.

Section 44. Statutory form power of attorney. A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this part.

MONTANA STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I .....

(Name of Principal)

name the following person as my agent:

Name of Agent: .....

Agent's Address:.....

Agent's Telephone Number:.....

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:.....

Successor Agent's Address:.....

Successor Agent's Telephone Number:.....

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent:.....

Second Successor Agent's Address:.....

Second Successor Agent's Telephone Number:.....

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

(...) Real Property
(...) Tangible Personal Property
(...) Stocks and Bonds
(...) Commodities and Options
(...) Banks and Other Financial Institutions
(...) Operation of Entity or Business
(...) Insurance and Annuities
(...) Estates, Trusts, and Other Beneficial Interests
(...) Claims and Litigation
(...) Personal and Family Maintenance
(...) Benefits from Governmental Programs or Civil or Military Service
(...) Retirement Plans
(...) Taxes
(...) All Preceding Subjects

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

.....

.....

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator or guardian of my estate:

.....

Nominee's Address:.....

Nominee's Telephone Number:.....

Name of Nominee for guardian of my person: .....

Nominee's Address: .....

Nominee's Telephone Number: .....

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

....

Your Signature Date

.....

Your Name Printed

.....

Your Address

.....

Your Telephone Number

State of .....

[County] of.....

This document was acknowledged before me on

.....,

(Date)

by.....

(Name of Principal)

..... (Seal, if any)

Signature of Notary

My commission expires:.....

This document prepared by:

.....

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

(2) act in good faith;

(3) do nothing beyond the authority granted in this power of attorney; and

(4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

(1) act loyally for the principal's benefit;

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

(3) act with care, competence, and diligence;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and

(6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) death of the principal;

(2) the principal's revocation of the power of attorney or your authority;

(3) the occurrence of a termination event stated in the power of attorney;

(4) the purpose of the power of attorney is fully accomplished; or

(5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2. If you violate the Uniform Power of Attorney Act, Title 72, chapter 31, part 2, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

Section 45. Agent's certification. The following optional form may be used by an agent to certify facts concerning a power of attorney.

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of .....

County of.....

I, ... (Name of Agent), certify under penalty of perjury that .....(Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated .....

I further certify that to my knowledge:

(1) the principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;

(2) if the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) .....

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

....

Agent's Signature Date

.....

Agent's Name Printed

.....

Agent's Address

.....

Agent's Telephone Number

This document was acknowledged before me on .....,

(Date)

by.....

(Name of Agent)

..... (Seal, if any)

Signature of Notary

My commission expires: .....

This document prepared by:

.....

Section 46. Section 72-31-238, MCA, is amended to read:

"72-31-238. Uniformity of application and construction. ~~This part~~ *In applying and construing this uniform act, consideration* must be ~~applied and construed to effectuate its general purpose to make uniform the~~ *given to the need to promote uniformity of the* law with respect to ~~the~~ *its* subject ~~of this part~~ *matter* among *the* states ~~enacting~~ *that enact* it."

Section 47. Relation to electronic signatures in global commerce act. This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 48. Effect on existing powers of attorney. Except as otherwise provided in [this act], on [the effective date of this act]:

(1) [this act] applies to a power of attorney created before, on, or after [the effective date of this act] unless it is a health care power of attorney;

(2) [this act] applies to a judicial proceeding concerning a power of attorney commenced on or after [the effective date of this act] unless it is a health care power of attorney;

(3) [this act] applies to a judicial proceeding concerning a power of attorney commenced before [the effective date of this act] unless the court finds that application of a provision of [this act] would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) an act done before [the effective date of this act] is not affected by [this act].

Section 49. Repealer. The following sections of the Montana Code Annotated are repealed:

72-31-201. Statutory form of power of attorney.

72-31-237. Existing interests — foreign interests.

Section 50. Codification instruction. (1) [Sections 1 through 24, 43 through 45, and 47] are intended to be codified as an integral part of Title 72, chapter 31, part 2, and the provisions of Title 72, chapter 31, part 2, apply to [sections 1 through 24, 43 through 45, and 47].

Approved April 1, 2011

CHAPTER NO. 110

[HB 428]

AN ACT REVISING BUSINESS FILING WITH THE SECRETARY OF STATE; ALLOWING A PERSON DOING BUSINESS IN MONTANA TO CONTEST THE REGISTRATION OF AN ASSUMED BUSINESS NAME; MODIFYING THE EXISTING CONTEST OF REGISTRATION OF NAME PROCESS; ALLOWING THE SECRETARY OF STATE TO ASSESS CERTAIN FEES AND COSTS TO THE LOSING PARTY WHEN AN ASSUMED BUSINESS NAME IS CONTESTED; PROVIDING A PENALTY; AMENDING SECTIONS 30-13-202 AND 35-1-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name — when prohibited — *contest procedure.* (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

(3) A person doing business in this state may contest the registration of an assumed business name by following the procedures set forth in 35-1-310."

Section 2. Section 35-1-310, MCA, is amended to read:

"35-1-310. Contest of registration of name — *penalty.* (1) A person doing business in this state may contest the ~~subsequent~~ registration of a name under this section with the office of the secretary of state by filing an acknowledged notice of contest with the secretary of state and sending a copy of

the notice of contest to the person who ~~subsequently~~ registered the contested name. The notice to the secretary of state must be accompanied by a $100 deposit, which the secretary of state shall award to the prevailing party in the contest.

(2) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name in the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days. If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest. If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing. Where consistent with this section, the informal procedures of the Montana Administrative Procedure Act apply.

(3) The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

(a) the strength or unique nature of the names;

(b) the similarity of sound, appearance, or meaning of the names;

(c) the intent of the parties;

(d) the type of businesses engaged in or to be engaged in by the parties;

(e) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;

(f) the nature and quality of goods or services provided by the parties;

(g) the level of sophistication of potential purchasers of goods or services offered by the parties;

(h) the length of time the parties have been transacting business under the name or names in question;

~~(h)~~*(i)* whether the party contesting the ~~subsequent~~ registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and

~~(i)~~*(j)* whether the names in question are in fair use, have been abandoned, or are parodies of other names.

(4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and may order that the contested name be changed in the records of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the office of the secretary of state.

(5) The secretary of state may order that the losing party pay any attorney fees and costs incurred by the prevailing party to contest the name or by the secretary of state to administer the provisions of this section, including any hearings.

~~(5)~~*(6)* A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

(7) (a) A person who registers an assumed business name under 30-13-202 with the intent to deceive or harass another person doing legitimate business under the laws of this state is subject to a penalty of $1,000 in a civil action brought by a county attorney in the district court with jurisdiction for the county.

(b) A penalty collected pursuant to subsection (7)(a) must be deposited in the county general fund."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2011

CHAPTER NO. 111

[HB 484]

AN ACT CLARIFYING THAT THE PROVISION OF ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS IS BASED ON ANNUAL VERIFICATION OF ADDRESSES AND IS NOT PERMANENT; AMENDING SECTIONS 13-13-212 AND 13-21-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions — *annual absentee ballot list.* (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as

the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall *annually* mail a forwardable address confirmation form ~~in January of each year~~ to each elector who has requested an absentee ballot for subsequent elections. *The address confirmation form must be mailed in January*. The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the ~~register of electors who have requested an absentee ballot for each subsequent election~~ *annual absentee ballot list*.

(c) An elector who has been removed from the ~~register~~ *annual absentee ballot list* may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 2. Section 13-21-210, MCA, is amended to read:

"13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature; or

(ii) by properly completing, signing, and returning to the election administrator the federal post card application.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in 13-2-304 for late registration.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an elector fails to provide the address confirmation required by 13-13-212, the elector ~~will~~ *must* be removed from the ~~permanent~~ *annual* absentee ballot list. An elector who is removed from the ~~permanent~~ *annual* absentee ballot list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.

(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2011

CHAPTER NO. 112

[HB 497]

AN ACT REMOVING THE PROHIBITION ON PERMITS TO APPROPRIATE AND CONSUME MORE THAN 4,000 ACRE-FEET OF WATER ANNUALLY; AND AMENDING SECTION 85-2-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-301, MCA, is amended to read:

"85-2-301. Right to appropriate — recognition and confirmation of permits issued after July 1, 1973. (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may appropriate water only for a beneficial use.

(2) (a) Only the department may appropriate water by permit ~~in either of the following instances:~~

~~(i)~~ for transport outside the following river basins:

~~(A)~~*(i)* the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

~~(B)~~*(ii)* the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

~~(C)~~*(iii)* the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

~~(D)~~*(iv)* the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

~~(E)~~*(v)* the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

~~(F)~~*(vi)* the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.~~; or~~

~~(ii) whenever water in excess of 4,000 acre-feet a year and 5.5 cubic feet per second, for any use, is to be consumed.~~

(b) ~~Water for these purposes or in these amounts may be leased from the department by any person~~ *The department may lease water subject to this subsection (2)* under the provisions of 85-2-141.

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

(4) All permit actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a permit by the department."

Approved April 1, 2011

CHAPTER NO. 113

[HB 536]

AN ACT REPEALING THE REQUIREMENT THAT A GRIZZLY BEAR OR THE PARTS OF A GRIZZLY BEAR BE REGISTERED WITH THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS BEFORE THEY MAY BE SOLD IN ACCORDANCE WITH FEDERAL LAW; AMENDING SECTIONS 87-3-111 AND 87-3-118, MCA; REPEALING SECTION 87-3-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-111, MCA, is amended to read:

"87-3-111. Unlawful possession, shipping, or transportation of game fish, birds, game animals, or fur-bearing animals — exceptions — penalties. (1) It is unlawful for a person to possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit:

(a) the possession, shipping, or transportation of hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided ~~in 87-3-110~~ *by federal law*;

(b) the possession, shipping, or transportation of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the possession, shipping, or transportation of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) the possession, shipping, or transportation of paddlefish roe as caviar under the provisions of 87-4-601; or

(e) the possession, shipping, or transportation of captive-reared migratory waterfowl.

(3) It is unlawful for a person to possess, ship, or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within the boundaries of the eastern Montana fishing district, as established by commission regulations.

(4) The possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the same are found killed, captured, or took the game fish, bird, game animal, or fur-bearing animal.

(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in 87-1-111 and 87-1-115. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(6) (a) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed $1,000, then the person is subject to the penalties in 87-1-102.

(b) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof

exceeds $1,000, then the person shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person who is convicted under this section or who forfeits bond or bail after being charged with a violation of this section shall lose all hunting, fishing, and trapping licenses and permits and license privileges for a minimum of 3 years or up to a lifetime revocation from the date of conviction. The department shall notify the person of the loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, to the department within 10 days of notification by the department."

Section 2. Section 87-3-118, MCA, is amended to read:

"87-3-118. Unlawful sale of game fish, birds, game animals, or fur-bearing animals — penalty. (1) A person commits the offense of unlawful sale of a game fish, bird, game animal, or fur-bearing animal if the person purposely or knowingly sells, purchases, or exchanges all or part of any game fish, bird, game animal, or fur-bearing animal.

(2) The value of the game fish, bird, game animal, or fur-bearing animal must be determined from the schedules of restitution values set out in 87-1-111 and 87-1-115. The value of game fish, birds, game animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(3) This section does not prohibit:

(a) the sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided ~~in 87-3-110~~ *by federal law*;

(b) the sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) the donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-601; or

(e) the sale, purchase, or exchange of captive-reared migratory waterfowl.

(4) (a) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed $1,000, then the person shall be fined an amount not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both.

(b) In addition to the penalties in subsection (4)(a), the person, upon conviction or forfeiture of bond or bail, may lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a period set by the court. The department shall notify the person of any loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification by the department.

(5) (a) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof

exceeds $1,000, then the person shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 5 years, or both.

(b) In addition to the penalties in subsection (5)(a), the person, upon conviction or forfeiture of bond or bail, shall lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a minimum of 3 years or up to a lifetime revocation from the date of conviction. The department shall notify the person of the loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification by the department."

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

87-3-110. Registration for sale of certain grizzly bears.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2011

CHAPTER NO. 114

[HB 573]

AN ACT INCLUDING WITHIN THE INSURANCE COMMISSIONER'S DUTIES A REQUIREMENT TO STUDY CREATION OF A STATEWIDE ALL-PAYER, ALL-CLAIMS DATABASE FOR HEALTH CARE; REQUIRING USE OF AN ADVISORY COUNCIL; ESTABLISHING REPORTING REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, comprehensive data about the quality and cost of health care allows state policymakers to monitor the success and efficiency of efforts to reduce health care costs and improve both health care quality and population health; and

WHEREAS, comprehensive health care data can show statewide variation in care, including whether evidence-based guidelines and best-practice clinical standards are being followed and how they affect cost and quality; and

WHEREAS, access to comparative data can help businesses to learn where they stand when compared with their peers with respect to the cost and covered services of health insurance policies; and

WHEREAS, comparative data provides consumers with information that they and their health care providers can use to make informed decisions about the effectiveness of treatments and the quality of care; and

WHEREAS, comparative data supports providers' efforts to design targeted quality improvement initiatives and to compare their own performance with that of their peers; and

WHEREAS, comprehensive health care data helps health care policymakers evaluate reform efforts and identify communities that provide cost-effective care so that successful initiatives can be identified and replicated; and

WHEREAS, other states have learned of the value of all-payer, all-claims health care databases and have implemented them to the benefit of their citizens while protecting the privacy rights of all individuals.

Be it enacted by the Legislature of the State of Montana:

Section 1. Review of health care insurance — advisory council. (1) The insurance commissioner shall convene an advisory council to review the costs, benefits, and procedural and technical requirements necessary to design,

implement, and maintain a statewide all-payer, all-claims database for health care. The commissioner shall investigate, as provided in 33-1-311 within available funding, the following insurance matters related to health care:

(a) specific strategies to measure and collect data related to health care safety and quality, utilization, health outcomes, and cost;

(b) data elements that foster quality improvements and peer group comparisons;

(c) usable and comparable information that allows public and private health care purchasers, consumers, and data analysts to identify and compare health plans, health insurers, health care facilities, and health care providers regarding the provision of safe, cost-effective, high-quality health care services;

(d) existing health care databases that may provide standards or methods useful in establishing or maintaining a database in a cost-effective and efficient manner;

(e) elements necessary to measure safety, timeliness, effectiveness, efficiency, equity, privacy, and patient-centered approaches;

(f) data regarding claims, eligibility requirements, and other publicly available data that may be used to minimize the cost and administrative burden of collecting data; and

(g) any other health care information that the commissioner or the advisory council considers relevant to creation of a statewide all-payer, all-claims database for health care.

(2) The insurance commissioner shall report by August 1, 2012, to the children, families, health, and human services interim committee on the results of the advisory council's review and any recommendations for action by the 63rd legislature.

Section 2. Effective date. [This act] is effective July 1, 2011.

Section 3. Termination. [This act] terminates December 31, 2012.

Approved April 1, 2011

CHAPTER NO. 115

[SB 7]

AN ACT REQUIRING ELECTRICAL GENERATION FACILITIES AND UTILITIES IN MONTANA THAT BUY OR SELL RENEWABLE ENERGY CREDITS TO FILE RENEWABLE ENERGY CREDIT REPORTS WITH THE DEPARTMENT OF REVENUE AND THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO REVIEW THE REPORT; PROVIDING EXCEPTIONS TO THE REPORTS' CONTENTS; PROVIDING A PENALTY FOR NOT FILING A RENEWABLE ENERGY CREDIT REPORT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, a growing number of states have adopted renewable portfolio standards requiring electricity retailers to acquire a minimum percentage of their power from renewable energy resources, and renewable energy credits are used to meet those acquisition targets; and

WHEREAS, the environmental attributes of a renewable power source reside in an unbundled renewable energy credit and associated electrons are considered generic electricity in power markets and priced accordingly; and

WHEREAS, there are no central clearinghouses and no futures market for renewable energy credits, and contracts for large volumes of renewable energy credits often contain confidentiality clauses that prohibit price disclosure for the term of the contract; and

WHEREAS, unbundled renewable energy credits sent to certain markets could depress the value of the associated electrons that remain in the region, and regional utilities could face higher costs for integrating renewable power constructed to meet certain states' increased demand for renewable energy credits; and

WHEREAS, it is in the public interest to disclose the price of renewable energy credits because it provides credibility and transparency to state-legislated policies such as renewable portfolio standards.

Be it enacted by the Legislature of the State of Montana:

Section 1. Electrical generation facilities renewable energy credit reporting. (1) (a) Except as provided in [section 2], a utility as defined in 69-5-102 operating in Montana, a competitive electricity supplier as defined in 69-3-2003, and any owner of an electrical generation facility operating in Montana that buys or sells renewable energy credits shall annually file a renewable energy credit report in accordance with this section.

(b) The report must be filed by March 1 of the year following the purchase or sale of the renewable energy credit.

(2) Except as provided in [section 2], the report must include:

(a) the price of any renewable energy credit bought or sold by the facility or utility; and

(b) whether electrical energy and renewable energy credits were bought or sold together or separately, as a bundled or unbundled product.

(3) Except as provided in subsection (4), the reports are not subject to the regulatory powers of the department of revenue. The department of revenue shall make the report available for public inspection.

(4) A utility or owner of an electrical generation facility that fails to file the report required pursuant to this section shall pay an administrative penalty, assessed by the department of revenue, of $1,500. A utility may not recover this penalty through an increase in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

(5) For the purposes of implementing this section, "electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power.

(6) (a) The report required in subsection (1) must be filed with the department of revenue in a format determined by the department.

(b) A utility, a competitive electricity supplier, or an owner of an electrical generation facility that is required to file a report pursuant to subsection (1) shall provide a copy of the report to the energy and telecommunications interim committee provided for in 5-5-230. Before September 15 of the year preceding a legislative session, the energy and telecommunications interim committee shall review the reports and, if necessary, submit recommendations regarding the use of renewable energy credits in Montana to the legislature.

Section 2. Exceptions to report contents. (1) If a utility, a competitive electricity supplier, or an owner of an electrical generation facility operating in

Montana required to file the report pursuant to [section 1] buys or sells a renewable energy credit in a market where the price of a renewable energy credit is not publicly disclosed, the utility, competitive electricity supplier, or owner of an electrical generation facility operating in Montana is not required to disclose the price.

(2) The utility, competitive electricity supplier, or owner of an electrical generation facility operating in Montana shall report the number of credits bought or sold and whether the energy and renewable energy credits were bought or sold together or separately as a bundled or unbundled product.

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 69, chapter 3, part 20, and the provisions of Title 69, chapter 3, part 20, apply to [sections 1 and 2].

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [This act] applies to renewable energy credits bought or sold on or after January 1, 2012.

Approved April 1, 2011

CHAPTER NO. 116

[SB 12]

AN ACT REPEALING AN OBSOLETE BUSINESS EQUIPMENT PROPERTY TAX REIMBURSEMENT TO LOCAL GOVERNMENT TAXING JURISDICTIONS; REPEALING SECTION 15-1-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. The following section of the Montana Code Annotated is repealed:

15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2011

CHAPTER NO. 117

[SB 49]

AN ACT REVISING THE SIZE OF TRAILER LICENSE PLATES; ESTABLISHING THE SIZE OF MOTORCYCLE AND QUADRICYCLE LICENSE PLATES; DESIGNATING SMALL LICENSE PLATES AS THE DEFAULT SIZE FOR A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS; ALLOWING A PERSON REGISTERING A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS TO CHOOSE LARGE LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate if, upon renewal of registration under ~~61-3-332~~ *this section*, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until January 1, 2015, and upon payment of the fee required in 61-3-321(12)(b), a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect

at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) *(a)* For ~~trailers~~ *semitrailers, travel trailers, pole trailers, trailers with a declared weight of 6,000 pounds or more,* and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(b) For motorcycles and quadricycles, plates must be of metal 4 inches wide and 7 inches in length.

(c) The department shall issue plates that are 4 inches wide and 7 inches in length for trailers with a declared weight of less than 6,000 pounds unless a person registering a trailer with a declared weight of less than 6,000 pounds requests plates that are 6 inches wide and 12 inches in length. A person registering a trailer shall pay all applicable fees for the plates chosen.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor

vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 2. Effective date. [This act] is effective January 1, 2012.

Approved April 1, 2011

CHAPTER NO. 118

[SB 92]

AN ACT ALLOWING NONRESIDENTS TO CAPTURE RAPTORS FOR FALCONRY OR CAPTIVE BREEDING PURPOSES; AND AMENDING SECTION 87-5-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-208, MCA, is amended to read:

"87-5-208. Nonresidents allowed raptors in state — *capture.* ~~(1)~~*(1)* A nonresident who possesses a valid federal falconry license may practice falconry in the state of Montana with legally acquired and permitted raptors. A nonresident is allowed to hunt with falcons in the state of Montana subject to all Montana laws and rules.

~~(2) A nonresident is not allowed to capture raptors from the wild in the state of Montana for falconry or captive breeding purposes.~~

(2) Nonresidents may capture raptors in Montana for falconry or captive breeding purposes pursuant to rules adopted under 87-5-204.

(3) A resident of a state that does not allow Montana residents to trap raptors in that state may not obtain a trapping permit in Montana."

Approved April 1, 2011

CHAPTER NO. 119

[SB 189]

AN ACT ALLOWING PHARMACISTS TO ADMINISTER THE INFLUENZA VACCINE TO INDIVIDUALS WHO ARE 12 YEARS OF AGE OR OLDER; AND AMENDING SECTION 37-7-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) ~~The~~ *Except as provided in [section 2], the* term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(11) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(12) "Device" has the same meaning as defined in 37-2-101.

(13) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(14) "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

(15) "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection (15)(a), (15)(b), or (15)(c).

(16) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper

utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

(17) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(18) "Health care facility" has the meaning provided in 50-5-101.

(19) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

(20) "Hospital" has the meaning provided in 50-5-101.

(21) "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(22) "Long-term care facility" has the meaning provided in 50-5-101.

(23) (a) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(24) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(25) "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

(26) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

(27) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(28) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

(29) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

(30) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(31) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(32) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(33) "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(34) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(35) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(36) "Prescriber" has the same meaning as provided in 37-7-502.

(37) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 353.

(38) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(39) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(40) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

(41) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(42) "Wholesale" means a sale for the purpose of resale."

Section 2. Administration of influenza vaccine. A pharmacist may administer immunization against the influenza virus by injection or inhalation for individuals who are 12 years of age or older.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 37, chapter 7, part 1, and the provisions of Title 37, chapter 7, apply to [section 2].

Approved April 1, 2011

CHAPTER NO. 120

[SB 205]

AN ACT PROHIBITING A UTILITY FROM PROVIDING ELECTRICITY SUPPLY SERVICE IN ANOTHER UTILITY'S SERVICE TERRITORY; AMENDING SECTIONS 69-5-102 AND 69-8-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Supply service prohibited. Except as provided in 69-5-104, a utility may not provide electricity supply service to premises in another utility's service territory. An electricity supplier may provide electricity supply service in the service territory of a public utility as provided in 69-8-411.

Section 2. Section 69-5-102, MCA, is amended to read:

"69-5-102. Definitions. When used in this part, the following definitions apply:

(1) "Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Cost" means the gross cost of constructing new electric service facilities to the premises, using new materials and similar design standards required to meet the load, from a point where there is existing electrical capacity to serve.

(3) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer that are controlled or operated by a distribution utility.

(4) "Distribution service" means the function of delivering electricity to the public by a distribution utility.

(5) "Distribution utility" means a utility owning distribution facilities for distribution of electricity to the public.

~~(3)~~*(6)* "Electric facilities provider" means any utility that provides electric service facilities to the public.

~~(4)~~*(7)* "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.

(8) "Electricity supplier" means any person, corporation, or governmental entity that:

(a) sells electricity to customers at retail rates in the state; and

(b) is not a public utility or a cooperative.

(9) "Electricity supply service" means the provision of electricity supply and related services through power purchase agreements, the acquisition and operation of electrical generation facilities, demand side management, and energy efficiency programs.

~~(5)~~*(10)* "Large customer" means any premises, except subdivisions, with the estimated connected load for full operation at an individual service for the premises of 500 kilowatts or larger.

~~(6)~~*(11)* "Line" means any material that is used to convey electrical energy and that is normally energized between 2,400 volts phase to ground and 14,400 volts phase to ground.

~~(7)~~*(12)* "Premises" means a building, residence, structure, irrigation pump, or facility to which electric service facilities are provided or are to be installed. However, two or more buildings, structures, irrigation pumps, or facilities that are located on one tract or contiguous tracts of land and that are used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes must together constitute one premises, except that any building, structure, irrigation pump, or facility, other than a trailer court, may not, together with any other building, structure, irrigation pump, or facility, constitute one premises if the electric service to it is separately metered and the charges for that service are calculated independently of charges for service to any other building, structure, irrigation pump, or facility.

~~(8)~~*(13)* "Regulated utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(14) "Service territory" means premises receiving distribution service from a utility on January 1, 2011, and premises added pursuant to Title 69, chapter 5.

~~(9)~~*(15)* "Subdivision" has the meaning provided for in 76-3-103. The definition includes subdivisions that may be developed in one or more phases of development at different periods of time.

~~(10)~~*(16)* "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18, or their successors or assignees.

~~(11)~~*(17)* "Vector" means a straight line between two points."

Section 3. Section 69-8-411, MCA, is amended to read:

"69-8-411. Nondiscriminatory access. (1) Nonutility generators and electricity suppliers must have open, fair, and nondiscriminatory access to a public utility's transmission and distribution facilities according to federal energy regulatory commission rules and regulations for purposes of serving those customers identified in 69-8-201(1) and (2).

(2) ~~Public~~ *Except as provided in [section 1], public* utilities shall grant the retail customers identified in 69-8-201(1) and (2) and their electricity suppliers access to transmission and distribution facilities at rates and under terms and conditions comparable to the public utility's own access to those facilities or access by the public utility's affiliates.

(3) Public utilities shall file tariffs for transmission and distribution services regulated by the federal energy regulatory commission and the commission implementing subsections (1) and (2)."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the provisions of Title 69, chapter 5, part 1, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 1, 2011

CHAPTER NO. 121

[SB 361]

AN ACT GENERALLY REVISING GAMBLING LAWS; ALLOWING VIDEO LINE GAMES IN LICENSED ESTABLISHMENTS; PROVIDING CONDITIONS FOR OPERATION OF VIDEO LINE GAMES; PROHIBITING ADVERTISING OR PROMOTION OF GAMES NOT SPECIFICALLY AUTHORIZED; PROHIBITING MANUFACTURERS FROM CHARGING CERTAIN GAME FEES ON A DAILY OR PERIODIC BASIS; AMENDING SECTIONS 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-611, AND 23-5-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-602, MCA, is amended to read:

"23-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) (a) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(3) (a) "Bonus game" means a game other than *a* bingo, poker, ~~or~~ keno*, or video line game* that is offered as a prize for playing and achieving a ~~win~~ *defined outcome* by playing *a* bingo, poker, ~~or~~ keno*, or video line game*. The term includes a game that allows a player to win free credits, free games, or a multiplier of credits already won or to move to an accelerated pay table for the play of ~~poker,~~ *a* bingo, *poker,* ~~or~~ keno*, or video line game*. A bonus game must make available to the player a display of the rules for the bonus game.

(b) The term does not include a game that allows the player to wager money or credits on the game or to lose money or credits already won. The term does not include a game by which the bonus game would become the predominant game rather than *a* bingo, poker, ~~or~~ keno*, or video line game*. The department shall by administrative rule define the conditions that would cause a bonus game to be the predominant game. The term does not include a game that displays or simulates a gambling activity that is not legal under state law.

(4) "Electronically captured data" means video gambling machine accounting information and records of video gambling machine events, in electronic form, that are automatically recorded and communicated to the department through an approved automated accounting and reporting system.

(5) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

(6) (a) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(7) "Licensed machine owner" means a licensed operator or route operator who owns a video gambling machine for which a permit has been issued by the department.

(8) "Multigame" means a combination of at least two or more approved types of games, including bingo, poker, keno, or video line games, within the same video gambling machine cabinet if the video gambling machine cabinet has been approved by the department.

~~(8)~~*(9)* "Permitholder" means a licensed operator on whose premises is located one or more video gambling machines for which a permit has been issued by the department.

~~(9)~~*(10)* (a) "Poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, 5-card stud, 7-card stud, or hold 'em, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(11) (a) "Video line game" means a video line game as defined by rules of the department and approved by the department. A video line game uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, bonus games, or credits that may be redeemed for cash. Video line games may be offered only in a multigame video gambling machine cabinet.

(b) The term does not include a game played on a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value."

Section 2. Section 23-5-603, MCA, is amended to read:

"23-5-603. Video gambling machines — possession — play — restriction. (1) A licensed operator may make available for public play only the number of approved video gambling machines specifically authorized by this part.

(2) The video gambling machines specifically authorized by this part are bingo, *poker,* keno, ~~and draw poker~~*, video line, and multigame video gambling* machines. Only the number of approved machines for which permits have been granted under 23-5-612 may be made available for play by the public on the premises of a licensed operator. The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

(3) A video line game approved by the department for play must be made available to any licensed machine owner.

(4) A manufacturer may not charge a fee for the use of a bingo, poker, keno, video line, or multigame video gambling machine on a daily basis or any other periodic basis.

(5) A licensed operator, distributor, route operator, or manufacturer is prohibited from referencing games not authorized under this title in advertising, promoting, or inducing play of a video gambling machine. The department shall further define by rule what advertising is allowed under this subsection.

~~(3)~~*(6)* Machines on premises appropriately licensed to sell alcoholic beverages for on-premises consumption, as provided in 23-5-119, must be placed:

(a) in a room, area, or other part of the premises in which alcoholic beverages are sold or consumed; and

(b) within control of the operator for the purpose of preventing access to the machines by persons under 18 years of age."

Section 3. Section 23-5-607, MCA, is amended to read:

"23-5-607. Expected payback — verification. *(1)* The department shall prescribe the expected payback value of ~~one~~ credit awarded to be at least 80% of the value of ~~one~~ credit played *for each bingo, poker, keno, and video line game in a video gambling machine. The credit ratio may not be greater than 92% for each video line game.*

(2) Each video gambling machine must have an electronic accounting device that the department may use to verify the winning percentage."

Section 4. Section 23-5-608, MCA, is amended to read:

"23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash. (1) A video gambling machine may not allow more than $2 to be played on a game or award free games or credits in excess of ~~the following amounts:~~

~~(a) $800 a game for a video draw poker machine; and~~

~~(b)~~ $800 a game ~~for a video keno or bingo machine~~.

(2) A licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher."

Section 5. Section 23-5-611, MCA, is amended to read:

"23-5-611. Machine permit qualifications — limitations. (1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises as provided in 23-5-119 may be granted a permit for the placement of video gambling machines on the person's premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of ~~video keno, bingo, or combination poker-keno-bingo~~ *multigame* gambling machines as were operated on the premises on that date may be granted to the person who held the permit for ~~such~~ *that number of* machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of ~~video~~ *bingo, poker,* keno, ~~bingo,~~ *video line,* or ~~combination poker-keno-bingo~~ *multigame video* gambling machines on the person's premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination."

Section 6. Section 23-5-621, MCA, is amended to read:

"23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part, including a description of the images and the minimum area of a screen that depicts a bingo, poker, ~~or~~ keno*, or video line* game;

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine to offer any combination of approved *bingo,* poker, keno, ~~and bingo~~ *and video line* games within the same video gambling machine cabinet if the owner of the video gambling machine has received approval to report video gambling machine information ~~utilizing~~ *using* an approved automated accounting and reporting system or has entered into an agreement with the department to ~~utilize~~ *use* an approved automated accounting and reporting system;

(e) allow, on an individual license basis, licensed machine owners and operators of machines that ~~utilize~~ *use* an approved automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected for business management, accounting, and payroll purposes~~; however,~~. *However,* the rules must specify that the data made available as a result of an approved automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

(f) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that ~~utilize~~ *use* an approved automated accounting and reporting system.

(2) The department's rules for an approved automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the approved automated accounting and reporting system within the limits prescribed by 23-5-115(8) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the approved automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department;

(d) describe specifications and a review and testing process for approved automated accounting and reporting systems to be ~~utilized~~ *used* by licensed operators, including the requirements for electronically captured data; and

(e) prescribe the frequency of reporting from an approved automated accounting and reporting system and provide exceptions for geographically isolated video gambling operators."

Section 7. Effective date. [This act] is effective on passage and approval and applies to the operation of video line games on or after January 1, 2012.

Approved April 1, 2011

CHAPTER NO. 122

[HB 25]

AN ACT EXPANDING AND REVISING LAWS RELATED TO CERTAIN LICENSING BOARDS' MEDICAL ASSISTANCE PROGRAMS; REQUIRING PERIODIC AUDITS OF THE PROGRAMS; APPLYING CONFIDENTIALITY PROVISIONS TO THE PROGRAMS; REQUIRING BOARD ACTION ON CERTAIN PROGRAM VIOLATIONS; REQUIRING MEDICAL ASSISTANCE PROGRAMS FOR THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF PHARMACY; AMENDING SECTIONS 37-1-131, 37-3-203, 37-3-401, 37-4-311, 37-7-201, AND 37-8-202, MCA; AND REPEALING SECTION 37-3-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Assistance program audits. (1) In each 10-year period, the medical assistance programs provided for in chapters 3, 4, 7, and 8 must be audited for performance objectives as determined by each licensing board in chapters 3, 4, 7, and 8 at least twice, as provided in subsections (2) and (3).

(2) Licensing boards in chapters 3, 4, 7, and 8 shall jointly contract and pay for an external audit of the relevant assistance program once every 5 years. The department shall assess the costs to each licensing board in chapters 3, 4, 7, and 8 for the external audit over a corresponding period.

(3) The department shall arrange for an internal audit midway through the subsequent 5-year period and shall assess costs to the licensing boards in chapters 3, 4, 7, and 8 for the internal audit, budgeting over the corresponding period.

Section 2. Confidentiality of medical assistance program information — health care information. (1) The proceedings and records of a medical assistance program created in chapter 3, 4, 7, or 8 relating to a licensee who has received or is receiving assistance from the medical assistance program:

(a) are confidential and are considered to be proceedings and records of a professional standards review committee under 37-2-201; and

(b) are not subject to discovery or introduction into evidence in any administrative or judicial proceeding other than a disciplinary proceeding against the licensee before the applicable licensing board. If the proceedings and records are introduced into evidence in a disciplinary proceeding, the introduced materials are public unless otherwise protected by law.

(2) Any health care information, as defined in 50-16-803, that is maintained by a health care provider in the provision of health care services to a licensee participating in a medical assistance program provided for in chapter 3, 4, 7, or 8 is subject to discovery from the licensee or the health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law.

Section 3. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards — quorum required. (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) take disciplinary action against the license of a person in a medical assistance program under chapter 3, 4, 7, or 8 if, in the period under contract, the licensee has on three separate occasions returned to the use of a prohibited or proscribed substance. The requirements of this subsection (1)(d) may not be construed as affecting the rights of an employer to evaluate, discipline, or discharge an employee.

~~(d)~~*(e)* pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(e)~~*(f)* consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the

proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

Section 4. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. (1) The board may:

(a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

~~(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;~~

~~(e)~~*(d)* review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

~~(f)~~*(e)* fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

(2) ~~If the board establishes a program pursuant to subsection (1)(d), the~~ *(a) The board shall establish a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.*

(b) The board shall ensure that a licensee who is required or volunteers to participate in the *medical assistance* program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified *medical assistance* program within this state and may not require a licensee to enroll in a qualified *treatment* program outside the state unless the board finds that there is no qualified *treatment* program in this state."

Section 5. Section 37-3-401, MCA, is amended to read:

"37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the *medical assistance* program established by the board under ~~37-3-203(1)(d)~~ *37-3-203*, in lieu of reporting directly to the board.

(b) The *medical assistance* program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to*:*

(A) comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

~~(ii)~~*(B)* ~~the licensee fails or refuses to~~ undergo a reasonable course of *recommended* treatment ~~that they recommend~~, including reasonable aftercare;

~~(iii)~~*(C)* ~~the licensee fails or refuses to~~ satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

~~(iv)~~*(ii)* the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

~~(v)~~*(iii)* ~~they~~ *the medical assistance program personnel* are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law."

Section 6. Section 37-4-311, MCA, is amended to read:

"37-4-311. Rehabilitation. The board shall establish a ~~protocol for the referral to a board-approved~~ rehabilitation *or medical assistance* program ~~for~~ *to assist and rehabilitate* licensees *who are* subject to the jurisdiction of the board *and* who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness."

Section 7. Section 37-7-201, MCA, is amended to read:

"37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice president, and secretary.

(2) The board shall regulate the practice of pharmacy in this state, including but not limited to:

(a) establishing minimum standards for:

(i) equipment necessary in and for a pharmacy;

(ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;

(iii) specifications for the facilities, environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;

(iv) monitoring drug therapy; and

(v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;

(b) requesting the department to inspect, at reasonable times:

(i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured; and

(ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(c) regulating:

(i) the training, qualifications, employment, licensure, and practice of interns;

(ii) the training, qualifications, employment, and registration of pharmacy technicians; and

(iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;

(d) examining applicants and issuing and renewing licenses of:

(i) applicants whom the board considers qualified under this chapter to practice pharmacy;

(ii) pharmacies and certain stores under this chapter;

(iii) wholesale drug distributors; and

(iv) persons engaged in the manufacture and distribution of drugs or devices;

(e) in concurrence with the board of medical examiners, defining the additional education, experience, or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner;

(f) issuing certificates of "certified pharmacy" under this chapter;

(g) establishing and collecting license and registration fees;

(h) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall outside the scope of this chapter. This subsection (2)(h) may not be construed to expand on the definition of the practice of pharmacy.

(i) establishing a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.

~~(i)~~*(j)* making rules for the conduct of its business;

~~(j)~~*(k)* performing other duties and exercising other powers as this chapter requires;

~~(k)~~*(l)* adopting and authorizing the department to publish rules for carrying out and enforcing parts 1 through 7 of this chapter, including but not limited to:

(i) requirements and qualifications for the transfer of board-issued licenses;

(ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;

(iii) qualifications and procedures for registering pharmacy technicians; and

(iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines.

(3) The board may:

(a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; and

(b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care."

Section 8. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization — meetings — powers and duties. (1) The board shall:

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

(i) establish a *medical assistance* program to assist licensed nurses who are found to be *physically or mentally* impaired by ~~mental illness,~~ habitual intemperance~~,~~ or the excessive use of ~~narcotic~~ *addictive* drugs, alcohol, or any other drug or substance *or by mental illness or chronic physical illness*. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation. *The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.* For purposes of funding this *medical assistance* program, the board shall adjust the renewal fee to be commensurate with the cost of the program.

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 9. Repealer. The following section of the Montana Code Annotated is repealed:

37-3-208. Confidentiality of information — physician assistance program.

Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 37, chapter 2, part 2, and the provisions of Title 37, chapter 2, part 2, apply to [section 2].

Approved April 7, 2011

CHAPTER NO. 123

[HB 80]

AN ACT GENERALLY REVISING LAWS RELATED TO UNEMPLOYMENT INSURANCE; CLARIFYING THAT EXCLUSION FROM WAGES FOR CERTAIN SELF-EMPLOYED WORKERS AND OWNERS DO NOT APPLY TO SIMILAR WAGES FOR CERTAIN TAX CREDIT PURPOSES; REVISING THE EXCLUSION FROM WAGES FOR CERTAIN SELF-EMPLOYED WORKERS AND OWNERS; REMOVING SERVICES PERFORMED BY SOLE PROPRIETORS, CERTAIN PARTNERS, PARTNERS IN CERTAIN LIMITED LIABILITY PARTNERSHIPS, AND MEMBERS OF CERTAIN LIMITED LIABILITY COMPANIES AS AN EXEMPTION FROM THE DEFINITION OF "EMPLOYMENT"; REMOVING SERVICES PERFORMED BY VOLUNTEERS IN CERTAIN FEDERAL PROGRAMS AS AN EXEMPTION FROM THE DEFINITION OF "EMPLOYMENT"; CLARIFYING SUBPOENA POWER AND ENFORCEMENT OPTIONS FOR THE DEPARTMENT OF LABOR AND INDUSTRY; ALLOWING INTERCEPTION OF LOTTERY WINNINGS TO OFFSET OVERPAYMENT OF UNEMPLOYMENT BENEFITS; CLARIFYING REFERENCES TO EMPLOYERS WITH EXPERIENCE RATING; AND AMENDING SECTIONS 15-31-150, 39-51-201, 39-51-204, 39-51-301, 39-51-1212, 39-51-1214, 39-51-2101, 39-51-2111, 39-51-2302, 39-51-3206, 53-20-221, AND 53-20-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-150, MCA, is amended to read:

"15-31-150. Credit for research expenses and research payments. (1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 41(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) *(i)* "Wages" has the meaning provided in 39-51-201*, except as provided in subsection (6)(e)(ii) of this section,* and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana.

(ii) ~~For~~ *Notwithstanding the exception to the definition of wages in 39-51-201(24)(b)(v), for* a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section."

Section 2. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A subsequent benefit year may not be established in Montana until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the benefit year is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and ~~(1)(c)~~ *(1)(p)*. All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by

the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(20) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(21) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(22) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(23) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(24) (a) "Wages", unless specifically exempted under subsection (24)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service; ~~or~~

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318*; or*

(v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship pursuant to

39-51-207 or to a partner in a limited partnership that has filed with the secretary of state, when the salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

(25) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(26) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

Section 3. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

~~(g) service performed by sole proprietors, working members of a partnership, members of a limited liability company treated as a partnership or sole proprietorship pursuant to 39-51-207, or partners in a limited liability partnership that has filed with the secretary of state;~~

~~(h)~~*(g)* service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

~~(i)~~*(h)* service performed as a direct seller as defined by 26 U.S.C. 3508;

~~(j)~~*(i)* service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

~~(k)~~*(j)* service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

~~(l)~~*(k)* service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

~~(m)~~*(l)* service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

~~(n)~~*(m)* service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

~~(o)~~*(n)* service performed by an individual who is sentenced to perform court-ordered community service or similar work;

~~(p)~~*(o)* service performed by elected public officials;

~~(q)~~*(p)* agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

~~(r)~~*(q)* service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

~~(s)~~*(r)* service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

~~(t)~~*(s)* service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

~~(u)~~*(t)* service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection ~~(1)(u)~~ *(1)(t)* does not apply to service performed in a program established for or on behalf of an employer or group of employers;

~~(v)~~*(u)* service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

~~(w)~~*(v)* service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

~~(x)~~*(w)* service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

~~(y)~~*(x)* service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

~~(z)~~*(y)* service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; ~~or~~

~~(aa)~~*(z)* services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than $1,000 in the calendar year*; or*

(aa) service performed by a volunteer participant in a program funded under the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq., or the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4950, et seq.

(2) (a) Except as provided in subsection (2)(b), an individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(b) An officer or a manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) and who obtains an independent contractor exemption pursuant to 39-71-417(1)(a)(ii) is not considered an independent contractor for the purposes of this chapter.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 4. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration — duties and powers of department — *duties and powers of board* — emergency provisions. (1) It is the duty of the department to administer this chapter. The department may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that ~~it~~ *the department* considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates is necessary to protect the solvency of the fund, ~~it~~ *the department* shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) *(a)* The department and the board may *jointly or individually* issue subpoenas and compel testimony and the production of evidence, including books ~~and~~, records, *papers, documents, and other objects that may be necessary and proper* in regard to any investigation or proceeding under this chapter.

(b) If a subpoena issued and served under this section is disobeyed or if a witness refuses to testify to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

(5) (a) In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work search if all of the following conditions are met:

(i) the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and

(ii) the governor issues an executive order directing the department to waive, suspend, or modify rules relating to claims.

(b) In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its rules relating to claims in portions of the state named by the department as appropriate to address the nature of the disaster and the purposes of unemployment insurance laws."

Section 5. Section 39-51-1212, MCA, is amended to read:

"39-51-1212. Experience rating for governmental entities. (1) The rates of governmental entities who have accumulated experience rating credits must be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods that are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates fixed using the median so that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(2) New governmental entities electing to pay contributions must be assigned the median rate for the year in which they become subject.

(3) The minimum rate may not be less than 0.06% and the maximum rate may not be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(4) If benefit charges exceed contributions paid in the last 2 completed state fiscal years, governmental entities' rates must be adjusted by increasing all rates to the next higher schedule.

(5) The computed rate is effective July 1 of each year.

(6) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(7) ~~A payment may not be required under this section~~ *The department may relieve benefit charges paid by a governmental employer* with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual without a reduction in hours or wages."

Section 6. Section 39-51-1214, MCA, is amended to read:

"39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) ~~A charge may not be made to the~~ *The* account of ~~a covered~~ *an* employer *with an experience rating as provided in 39-51-1213 may not be charged* with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307;

(e) if the base period employer is ordered to military service, as defined in 10-1-1003; ~~or~~

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10*; or*

(g) if the worker separates from employment as a result of domestic violence, a sexual assault, or stalking pursuant to 39-51-2111."

Section 7. Section 39-51-2101, MCA, is amended to read:

"39-51-2101. Total unemployment — when. *(1)* An individual is considered to be totally unemployed in any week during which the individual:

~~(1)~~*(a)* did not perform any work in employment and did not earn any wages for employment; or

~~(2)~~*(b) except as provided in subsection (2):*

(i) due to a lack of work, worked ~~less~~ *fewer* than the ~~customary~~ hours that are ~~normal for the individual's particular occupation due to a lack of work and provided that the~~ *typically worked in employment by the individual; and*

(ii) earned wages payable to the individual *that* are less than two times the individual's weekly benefit amount.

(2) An individual is not considered to be unemployed in any week in which the individual works at least 40 hours in employment."

Section 8. Section 39-51-2111, MCA, is amended to read:

"39-51-2111. Unemployment benefits for victims of domestic violence, sexual assault, or stalking. (1) (a) An individual who is otherwise eligible for benefits may not be denied benefits because the individual left work or was discharged because of circumstances resulting from the individual or a child of the individual being a victim of domestic violence, a sexual assault, or stalking or the individual left work or was discharged because of an attempt on

the individual's part to protect the individual or the individual's child from domestic abuse, a sexual assault, or stalking.

(b) ~~An employer's~~ *The* account *of an employer with an experience rating as provided in 39-51-1213* may not be charged for the payment of benefits to an individual who left work or was discharged because of circumstances resulting from domestic violence, a sexual assault, or stalking as provided for in subsection (1)(a).

(c) An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after filing a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment insurance benefits that the individual is entitled to under other provisions of state law.

~~(c) An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after the filing of a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment benefits that the individual is entitled to under other provisions of state law.~~

(2) For the purposes of subsection (1), an individual must be treated as being a victim of domestic violence, a sexual assault, or stalking if the individual provides one or more of the following:

(a) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction;

(b) a police record documenting the domestic violence, sexual assault, or stalking;

(c) medical documentation of domestic violence or a sexual assault; or

(d) other documentation or certification of domestic violence, a sexual assault, or stalking provided by a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has assisted the individual in dealing with domestic violence, a sexual assault, or stalking.

(3) An individual who is otherwise eligible for benefits under this section becomes ineligible if the individual remains in or returns to the abusive situation that caused the individual to leave work or be discharged.

(4) The department shall provide a report to the legislature, as provided in 5-11-210, regarding the benefits applied for and granted under this section, including a summary of the demographics of applicants for and recipients of the benefits and the average and total cost of benefits provided.

(5) For the purposes of this section:

(a) "domestic violence" means the physical, mental, or emotional abuse of an individual or the individual's child by a person with whom that individual or the individual's child lives or has recently lived;

(b) "sexual assault" means sexual assault as described in 45-5-502, sexual intercourse without consent as described in 45-5-503, incest as described in 45-5-507, or sexual abuse of children as described in 45-5-625; and

(c) "stalking" has the meaning provided in 45-5-220."

Section 9. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. Disqualification for leaving work without good cause. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified for any of the following reasons:

(a) The individual leaves employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing health care provider and, after recovering from the illness or injury when recovery is certified by a licensed and practicing health care provider, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible.

(b) The individual leaves temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons.

(c) The individual leaves employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the ~~employer's~~ account *of an employer with an experience rating as provided in 39-51-1213*.

(d) The individual leaves employment because of the mandatory military transfer of the individual's spouse. Any benefits paid under this subsection (2)(d) are not chargeable to the ~~employer's~~ account *of an employer with an experience rating as provided in 39-51-1213*.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204."

Section 10. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Collection of benefit overpayments. (1) A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment.

(2) The department may collect a benefit overpayment and any penalty:

(a) by having the claimant pay the amount owed directly to the department by check, money order, credit card, debit card, or electronic funds transfer; ~~or~~

(b) by offsetting the amount of the overpaid benefits owed against future unemployment benefits to be received by the claimant*; or*

(c) as provided in [section 13].

(3) The claimant is responsible for any:

(a) penalty established in accordance with 39-51-3201; and

(b) costs or processing fees associated with using the repayment methods set out in subsection (2)(a).

(4) The department may enter into an agreement with a claimant for the repayment of any benefit overpayment and penalty provided that repayment in full is made within 5 years of the date that it was established that an overpayment occurred.

(5) *(a)* ~~A~~ *Except as provided in subsection (5)(b), a* benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent.~~, except in~~

(b) In cases of theft or fraud *or when benefit overpayments have been made to winners of a state lottery as provided in [section 13]*, ~~when~~ benefits may be offset by as much as 100% of the weekly benefits to which a claimant is entitled.

(6) (a) The department may collect any benefit overpayment and penalty by directing the offset of any funds due the claimant from the state, except future unemployment benefits as provided in subsection (1) and retirement benefits. The department, through the department of revenue *or through the state lottery commission established in 23-7-201 if overpayment is to be collected as provided in [section 13]*, shall provide the claimant with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(b) The debt does not have to be determined to be uncollectible before being transferred for offset.

(7) (a) The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the person owes a covered unemployment compensation debt.

(b) For the purposes of this subsection (7), "covered unemployment compensation debt" means:

(i) a benefit overpayment and penalty owed because of the erroneous payment of unemployment compensation resulting from fraud, which has been adjudicated as a debt under Montana law and has remained uncollected for not more than 10 years; or

(ii) employer contributions, penalty, and interest owed to the unemployment trust fund that the department determines are attributable to fraud and that have remained uncollected for not more than 10 years.

(8) If, upon demand of the department, the claimant fails to make the payments provided for in this section, the unpaid benefit overpayment and associated penalty may be treated as a judgment against the claimant at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the claimant. The department may enforce the judgment at any time within 10 years of creation of the lien.

(9) The department may waive the benefit overpayment if the department finds that:

(a) the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant; or

(b) the overpayment was the result of department error.

(10) An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment.

(11) Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States."

Section 11. Section 53-20-221, MCA, is amended to read:

"53-20-221. Liability training program and materials for respite care. (1) The department, in conjunction with the department of labor and industry, shall develop a training program and educational materials on labor law and liability issues related to the employment of a person by an individual for respite care services under the exemptions provided in 39-3-406~~(1)(p)~~, 39-51-204~~(1)(y)~~, and 39-71-401~~(2)(u)~~. The educational materials must provide information on the labor law requirements applicable to an individual hiring a person for respite care services.

(2) The department shall make the training materials available to providers of community-based services for people with developmental disabilities that serve as the organized health care delivery system for respite care funds available from the department for use by individuals who hire and pay a person to provide respite care to a family member or a person for whom they are the legal guardian.

(3) To qualify for the respite care funds available from the department, an individual:

(a) shall receive training offered by a provider; and

(b) shall sign a statement acknowledging that the individual has completed the training and has read the related educational materials."

Section 12. Section 53-20-222, MCA, is amended to read:

"53-20-222. Respite care and employment responsibilities — liabilities. (1) Contingent upon approval of the program by the federal government for purposes of receiving federal medicaid funds, the department may make payment to an approved, certified, and qualified medicaid provider who passes through the payment on behalf of a family to a person providing respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under 29 U.S.C. 213. A qualified medicaid provider who passes through payment may not be considered an employer by the department for the purposes of workers' compensation, unemployment insurance, or wage and hour requirements.

(2) The department, through administrative rule, waiver of a state or federal program providing payment for respite care, or a pilot program, may not require a qualified medicaid provider to assume employer responsibilities or liabilities if the family chooses to negotiate the respite care agreement and the qualified provider does not:

(a) control the person who provides respite care; or

(b) direct the respite care provided by the person.

(3) (a) The department may provide an option to families to choose self-directed care.

(b) The department shall continue to provide families the choice of negotiating respite care by using a local qualified medicaid provider to provide pass-through payment and benefiting from the exemptions provided under 39-3-406~~(1)(p)~~, 39-51-204~~(1)(y)~~, and 39-71-402~~(2)(u)~~."

Section 13. Interception of lottery winnings for unemployment insurance offsets — notice to agency — procedures. (1) For the purposes of this section:

(a) "unemployment insurance benefit overpayments" includes collections that are made pursuant to 39-51-3206;

(b) "unpaid taxes, penalties, and interest" includes payments required from employers under 39-51-404, 39-51-603, 39-51-1103, 39-51-1105, 39-51-1125, and 39-51-1301; and

(c) "unemployment insurance division" means the unemployment insurance division of the department of labor and industry.

(2) The unemployment insurance division shall periodically certify to the state lottery the names and social security numbers of persons who have incurred unemployment insurance benefit overpayments and the names and social security numbers of individual employers who are liable for unpaid taxes, including penalties and interest assessed on unpaid taxes.

(3) The state lottery shall deduct and withhold from any payment of lottery winnings the amount specified by the unemployment insurance division as the amount of the unemployment insurance benefit overpayments or unpaid taxes, penalties, and interest.

(4) The state lottery shall pay any amount deducted and withheld under subsection (3) to the unemployment insurance division for application to the unemployment insurance benefit overpayments or unpaid taxes, penalties, and interest.

(5) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as lottery winnings and paid by the individual to the unemployment insurance division as repayment against the unemployment insurance benefit overpayments or unpaid taxes, penalties, and interest.

Section 14. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 15. Codification instruction. [Section 13] is intended to be codified as an integral part of Title 39, chapter 51, part 32, and the provisions of Title 39, chapter 51, part 32, apply to [section 13].

Approved April 7, 2011

CHAPTER NO. 124

[HB 82]

AN ACT REQUIRING THE BOARD OF MEDICAL EXAMINERS TO PROVIDE AN ANNUAL REPORT ON THE NUMBER AND TYPES OF COMPLAINTS INVOLVING PHYSICIAN PRACTICES IN PROVIDING WRITTEN CERTIFICATION FOR THE MEDICAL USE OF MARIJUANA; AMENDING SECTIONS 37-3-203, 50-46-103, AND 50-46-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. (1) The board may:

(a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

(e) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

(2) If the board establishes a program pursuant to subsection (1)(d), the board shall ensure that a licensee who is required or volunteers to participate in the program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified program within this state and may not require a licensee to enroll in a qualified program outside the state unless the board finds that there is no qualified program in this state.

(3) (a) The board shall report annually on the number and types of complaints it has received involving physician practices in providing written certification, as defined in 50-46-102, for the medical use of marijuana provided for in Title 50, chapter 46. The report must contain:

(i) the number of complaints received by the board pursuant to 37-1-308;

(ii) the number of complaints for which a reasonable cause determination was made pursuant to 37-1-307;

(iii) the general nature of the complaints;

(iv) the number of investigations conducted into physician practices in providing written certification; and

(v) the number of physicians disciplined by the board for their practices in providing written certification for the medical use of marijuana.

(b) Except as provided in subsection (3)(c), the report may not contain individual identifying information regarding the physicians about whom the board received complaints.

(c) For each physician against whom the board takes disciplinary action related to the physician's practices in providing written certification for the medical use of marijuana, the report must include:

(i) the name of the physician;

(ii) the general results of the investigation of the physician's practices; and

(iii) the disciplinary action taken against the physician.

(d) The board shall provide the report to the children, families, health, and human services interim committee by August 1 of each year and shall make a copy of the report available on the board's website."

Section 2. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures — minors — confidentiality — ~~report~~ *reports* to legislature. (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

(a) written certification that the person is a qualifying patient;

(b) an application or renewal fee;

(c) the name, address, and date of birth of the qualifying patient;

(d) the name, address, and telephone number of the qualifying patient's physician; and

(e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions signs and submits a written statement that:

(a) the minor's physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the medical use of marijuana; and

(b) the minor's custodial parent or legal guardian with responsibility for health care decisions:

(i) consents to the medical use of marijuana by the minor;

(ii) agrees to serve as the minor's caregiver; and

(iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.

(4) (a) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement:

(i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver; and

(ii) acknowledging that possession of the registry identification card does not allow the caregiver to engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting marijuana for medical use by a qualifying patient.

(b) The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense.

(c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

(a) the name, address, and date of birth of the qualifying patient;

(b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

(c) the date of issuance and expiration date of the registry identification card; and

(d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department; or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians.

(10) The board of medical examiners shall report annually to the legislature, as provided in 37-3-203, on the number and types of complaints the board has received involving physician practices in providing written certification for the medical use of marijuana."

Section 3. Section 50-46-202, MCA, is amended to read:

"50-46-202. Disclosure of confidential information relating to medical use of marijuana — penalty. (1) A *Except as provided in 37-3-203, a* person, including an employee or official of the department or other state or local government agency, commits the offense of disclosure of confidential information relating to medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of 50-46-103.

(2) A person convicted of disclosure of confidential information relating to medical use of marijuana shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 4. Coordination instruction. (1) If House Bill No. 161 is passed and approved, then [this act] is void.

(2) If House Bill No. 175 is passed by the electorate in 2012, then [this act] is void on [the effective date of House Bill No. 175].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2011

CHAPTER NO. 125

[HB 117]

AN ACT REQUIRING CERTAIN ADULT OFFENDERS SUBJECT TO SUPERVISION BY THE DEPARTMENT OF CORRECTIONS PURSUANT TO THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION TO PROVIDE A BIOLOGICAL SAMPLE FOR DNA TESTING; AMENDING SECTION 44-6-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-6-103, MCA, is amended to read:

"44-6-103. Collection of samples and maintenance of data. (1) Following entry of judgment, a person convicted of a felony offense, a youth found under 41-5-1502 to have committed a sexual or violent offense, ~~or~~ a defendant ordered under 46-18-202 to provide a biological sample for DNA testing*, or an adult offender convicted in another state and sentenced to death or imprisonment for more than 1 year who is subject to supervision by the department of corrections pursuant to the Interstate Compact for Adult Offender Supervision provided for in 46-23-1115* shall provide a biological sample for DNA analysis to determine identification characteristics specific to the person. The sample must be provided to the department of corrections if the person is incarcerated in a facility administered by the department of corrections. If the person is not incarcerated in a facility administered by the department of corrections, the sample must be provided to a person or entity designated by the county sheriff.

(2) The biological sample must be collected, stored, and sent by the department of corrections or the person or entity designated by the county sheriff under subsection (1) to the department for entry in the DNA identification index in accordance with rules adopted by the department with the advice of the department of public health and human services.

(3) The offender is responsible, if able to pay, for the cost of the collection of the sample. The fees charged for the collection may not exceed the actual costs of collection.

(4) The forensic DNA laboratory may perform DNA analysis only for those markers that have value for law enforcement identification purposes.

(5) The knowing refusal or failure to provide a biological sample under this part is grounds for revocation of a suspended or deferred imposition of sentence."

Section 2. Applicability. [This act] applies to an adult offender who is convicted in another state and sentenced to death or imprisonment for more than 1 year and is subject to supervision by the department of corrections pursuant to the Interstate Compact for Adult Offender Supervision provided for in 46-23-1115 on or after October 1, 2011.

Approved April 7, 2011

CHAPTER NO. 126

[HB 142]

AN ACT REVISING LAWS RELATING TO LEGISLATIVE INTERIM COMMITTEES AND REPORTS TO THE LEGISLATURE; REQUIRING INTERIM COMMITTEES TO REVIEW STATUTORILY ESTABLISHED

ADVISORY COUNCILS AND REQUIRED REPORTS OF THEIR ASSIGNED AGENCIES TO MAKE RECOMMENDATIONS REGARDING RETENTION OR ELIMINATION; REVISING REQUIREMENTS RELATING TO REPORTS TO THE LEGISLATURE; AND AMENDING SECTIONS 5-5-215 AND 5-11-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-215, MCA, is amended to read:

"5-5-215. Duties of interim committees. (1) Each interim committee shall:

(a) review administrative rules within its jurisdiction;

(b) subject to 5-5-217(3), conduct interim studies as assigned;

(c) monitor the operation of assigned executive branch agencies with specific attention to the following:

(i) identification of issues likely to require future legislative attention;

(ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;

(d) review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;

~~(d)~~*(e)* review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and

~~(e)~~*(f)* accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee."

Section 2. Section 5-11-210, MCA, is amended to read:

"5-11-210. Clearinghouse for reports to legislature. (1) For the purposes of this section, "report" means a *written* report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the appropriate interim or statutory committee:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed 100 words;

(c) if the report is available electronically, its location on the internet; and

~~(c)~~*(d)* a recommendation on how many *paper* copies of the report*, if any,* should be provided to the legislature~~;~~

~~(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; and~~

~~(e) an estimated cost for each copy of the report~~.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the appropriate interim or statutory committee shall, in writing, direct the reporting entity to provide a specific number of *paper* copies. The number of copies required is at the sole discretion of the appropriate interim or statutory committee. The appropriate interim or statutory committee may require the reporting entity to mail the copies of the report.

(4) The appropriate interim or statutory committee may require that the report be submitted in an electronic format *that is* usable on the legislature's current computer hardware~~,~~ *or* in a ~~microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory~~ *digital form*.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative services division.

(6) The executive director of the legislative services division shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, ~~mail~~ *provide* to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b)*, and the location of electronic copies*. ~~The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.~~

(8) The executive director of the legislative services division shall ~~make~~ *provide* copies of reports requested pursuant to subsection (7) ~~available~~ to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative services division may keep as many copies of a report as are necessary and discard the rest *or return them to the agency*.

(10) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201.

(11) Each report to the legislature required under 17-6-230, 19-2-405, 19-2-407, and 19-20-201 must be provided to the legislative services division as soon as the report is published. The legislative services division shall ensure that legislators are notified pursuant to this section of the report's availability. During the interim, the legislative services division shall ensure that members of the state administration and veterans' affairs interim committee and the legislative finance committee receive copies of the reports."

Approved April 7, 2011

CHAPTER NO. 127

[HB 171]

AN ACT REVISING LAWS RELATED TO LICENSE PLATE SIZES; DESIGNATING SMALL LICENSE PLATES AS THE DEFAULT SIZE FOR A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS; ALLOWING A PERSON REGISTERING A TRAILER WITH A DECLARED WEIGHT OF LESS THAN 6,000 POUNDS TO CHOOSE LARGE LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate if, upon renewal of registration under ~~61-3-332~~ *this section*, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until

January 1, 2015, and upon payment of the fee required in 61-3-321(12)(b), a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) *(a)* ~~For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate.~~ All license plates must be *metal and* treated with a reflectorized background material according to specifications prescribed by the department. *The word "Montana" must be placed on each license plate and the outline of the state of Montana must be used as a distinctive border on each standard license plate.*

(b) Plates for semitrailers, travel trailers, pole trailers, trailers with a declared weight of 6,000 pounds or more, and motor vehicles, other than motorcycles and quadricycles, must be 6 inches wide and 12 inches in length.

(c) Plates for motorcycles and quadricycles must be 4 inches wide and 7 inches in length.

(d) The department shall issue plates that are 4 inches wide and 7 inches in length for trailers with a declared weight of less than 6,000 pounds unless a person registering a trailer with a declared weight of less than 6,000 pounds requests plates that are 6 inches wide and 12 inches in length. A person registering a trailer shall pay all applicable fees for the plates chosen.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the

markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the

department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 2. Coordination instruction. If both Senate Bill No. 49 and [this act] are passed and approved, then Senate Bill No. 49 is void.

Section 3. Effective date. [This act] is effective January 1, 2012.

Approved April 7, 2011

CHAPTER NO. 128

[HB 212]

AN ACT ELIMINATING COUNTY CLASSIFICATIONS; REPLACING REFERENCES TO COUNTY CLASSIFICATIONS WITH AMOUNT OF TAXABLE VALUATION OR POPULATION; AMENDING SECTIONS 2-18-641, 2-18-702, 7-2-2213, 7-2-2218, 7-2-2222, 7-2-2225, 7-3-1214, 7-3-1306, 7-3-1341, 7-4-2405, 7-4-2601, 7-4-2602, 7-4-2703, 7-4-2705, 7-4-3006, 7-6-2102, 7-6-2401, 7-6-2413, 7-21-3211, 7-22-2142, 7-32-101, 7-32-2102, 7-32-2111, 13-17-101, 15-23-703, 15-24-3001, 15-36-332, 15-39-110, 30-14-122, 39-4-107, 80-7-814, AND 90-6-1001, MCA; REPEALING SECTIONS 7-1-2111 AND 7-1-2112, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-641, MCA, is amended to read:

"2-18-641. Exemption — employees of certain county hospitals or rest homes and hospital districts. (1) An employee of a county hospital or county rest home in a ~~third, fourth, fifth, sixth, or seventh class~~ county *having a taxable valuation of less than $30 million* or an employee of a hospital district is exempt from the provisions of this part.

(2) For any reduction in leave benefits for an employee subject to subsection (1), there must be an increase in compensation or benefits."

Section 2. Section 2-18-702, MCA, is amended to read:

"2-18-702. Group insurance for public employees and officers. (1) (a) Except as provided in subsection (1)(c), all counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing

greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations, hospitals, health centers, or nursing homes to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee, organization, hospital, health center, or nursing home to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

(c) The governing body of a ~~third, fourth, fifth, sixth, or seventh class~~ county *having a taxable valuation of less than $30 million* or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home or nursing home, or hospital district from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans provided pursuant to subsection (1)(a) or (1)(b).

(2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licensees in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

Section 3. Section 7-2-2213, MCA, is amended to read:

"7-2-2213. Resolution of board of county commissioners. The board of county commissioners, on the final hearing of the petition or petitions, shall, by a resolution entered on its minutes, determine:

(1) the boundaries of the proposed new county, and the boundaries determined by the board must be the boundaries of the proposed new county if it is created as provided in this part;

(2) whether the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county as required in this part or, in cases where separate petitions are presented from portions of two or more existing counties as required in this part, whether each petition is signed by at least 50% of the registered electors of that portion of each of the existing counties that is proposed to be taken into the proposed new county;

(3) whether any line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided;

(4) whether the proposed new county and affected existing counties meet the limitations contained in 7-2-2202;

(5) ~~the class to which the proposed new county will belong after its creation and~~ the name of the proposed new county as stated in the petition; and

(6) whether the area embraced within the proposed new county will be reasonably compact."

Section 4. Section 7-2-2218, MCA, is amended to read:

"7-2-2218. Form of ballot. (1) If the proposed new county is to be formed from one county or from portions of two or more existing counties, the ballot must be in the following form:

(a) notice required by 7-2-2215 must require the electors to cast ballots that contain the words "For the new county of.... (giving the name of the proposed new county) — Yes" and "For the new county of.... (giving the name of the proposed new county) — No".

(b) The ballots must also contain the names of individuals to be voted for to fill the various elective offices designated in the notice ~~for counties of the class to which the proposed county will belong, as determined by the board of county commissioners, as provided in this part~~.

(c) There must also be printed upon the ballot the words "For the county seat" and the names of all cities or towns that may have filed with the election administrator a petition, signed by at least 25 registered electors, nominating any city or town within the proposed new county for the county seat. The elector shall designate the elector's choice for county seat by marking a cross (X) opposite the name of the city or town for which the elector desires to cast a vote.

(2) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the notice required by 7-2-2215(1) must require the electors to cast ballots that must contain the legal description of the territory to be taken from the county in which the election is held, together with any name or names for the territory that may be in common use, and the words "For the territory described (or commonly known as....) to be detached from.... County and added to.... County — Yes" and "For the territory described (or commonly known as....) to be detached from.... County and added to.... County — No"."

Section 5. Section 7-2-2222, MCA, is amended to read:

"7-2-2222. Effect of election — resolution by county commissioners. (1) If, upon the canvass of the votes cast at the election, it appears that more than 50% of the votes cast by those voting in an election under 7-2-2215(1) in the county, by those voting in the same election in the territory proposed to be taken from the county, and by those voting in an election held under 7-2-2215(4) are affirmative, the board of county commissioners shall, by a resolution entered upon its minutes.~~,~~

(a) declare the new or enlarged county duly formed and created as a county of this state~~, of the class to which the same belongs and~~ under the name of .... County*;*~~, and, if~~

(b) if appropriate, *declare* that the city or town receiving the highest number of votes cast at the election for county seat ~~shall be~~ *is* the county seat of the county until removed in the manner provided by law*;* and

(c) ~~designate and~~ declare the individuals receiving, respectively, the highest number of votes for the ~~several~~ offices to be filled at the election to be duly elected to the offices.

(2) ~~However, if~~ *If* upon ~~such~~ *the* canvass it appears that more than 50% of the votes cast on the issue by those voting in the county, ~~or~~ by those voting in the territory proposed to be taken from the county, or by those voting in an election held under 7-2-2215(4) are negative, the board canvassing the vote ~~as provided herein~~ shall pass a resolution in accordance ~~therewith, and thereupon~~ *with the vote and* the proceedings relating to division of ~~such~~ *the* county or counties ~~shall~~ *must* cease. No other proceedings in relation to any other division of the old county or counties ~~shall~~ *may* be instituted for at least 4 years after ~~such~~ *the* determination."

Section 6. Section 7-2-2225, MCA, is amended to read:

"7-2-2225. Officers of new county. (1) Except as provided in subsections (2) through (4), at the election provided for in 7-2-2215, there must be chosen a board of county commissioners and other county and district officers as are provided by law ~~for counties of the class to which the new county belongs~~.

(2) All elected, qualified, and acting officers of the county or counties who reside within the proposed new county are considered to be officers of the new county if they file, within 5 days after the final hearing and determination of the petition for the proposed new county, with the board of county commissioners whose duty it is to call the election. Filing with the board is the officers' declaration of intent to become officers of the proposed new county. The board issuing the proclamation of the election ~~shall omit providing~~ *may not provide* for the election of any officers who have filed their declaration to continue in office.

(3) All elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as justices of the peace in the new county for the remainder of the term for which they were elected.

(4) All elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of the county into school districts, as provided in Title 20, chapter 6, shall hold office as school trustees in the new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as these districts are organized.

(5) The officers elected or appointed under the provisions of this part shall perform the duties and receive the compensation provided by general law for the office to which they have been appointed or elected in the counties of the class to which the new county belongs."

Section 7. Section 7-3-1214, MCA, is amended to read:

"7-3-1214. Consolidated municipality commission. (1) Except as otherwise provided in this part or part 13, all powers of the consolidated municipality are vested in a commission. ~~For the purpose of determining the number of members composing the commission, consolidated municipalities organized under the provisions of this part and part 13 shall be classified and all of the provisions of 7-1-2111 and 7-1-2112 govern and control the classification of the consolidated municipalities.~~

(2) (a) In consolidated municipalities ~~of the first class~~ *having a taxable valuation of $50 million or more*, the commission ~~shall~~ *must* consist of seven members.

(b) In consolidated municipalities ~~of the second class, third class, or fourth class~~ *having a taxable valuation of $12.5 million or more and less than $50 million*, the commission ~~shall~~ *must* consist of five members.

(c) In consolidated municipalities ~~of the fifth class, sixth class, or seventh class~~ *having a taxable valuation of less than $12.5 million*, the commission ~~shall~~ *must* consist of three members."

Section 8. Section 7-3-1306, MCA, is amended to read:

"7-3-1306. Division of treasury. (1) There ~~shall~~ *must* be in the department of finance a division of the treasury, the head of which ~~shall~~ *must* be treasurer of the municipality.~~, shall have the~~ *The treasurer has the* powers and *shall* perform the duties prescribed for city treasurers and county treasurers by ~~general~~ law~~,~~ and ~~shall be required to qualify by giving a bond in the same amount required of county treasurers of counties of the same class~~ *must be bonded for the faithful performance of official duties pursuant to Title 2, chapter 9, part 7*.

(2) All money received by an officer or employee of the municipality for or in connection with the business of the municipality ~~shall~~ *must* be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of ~~such~~ *the* money into the treasury and shall also, in the manner ~~hereinafter~~ provided *in this part*, designate the banking institutions with which it ~~shall~~ *must* be deposited."

Section 9. Section 7-3-1341, MCA, is amended to read:

"7-3-1341. Department of law. (1) The department of law is in the charge of a director appointed by the commission without definite term who must be a resident and elector of the municipality and who must possess all of the qualifications required of county attorneys.

(2) The director has all the powers and, either personally or through designated assistants, shall perform all the duties that are prescribed for county attorneys, city attorneys, and public administrators, and in addition, the director is chief legal adviser of and attorney for the municipality and of all departments and offices of the municipality. The director shall perform other duties that may be required by the commission.

(3) The director shall qualify by taking the oath of office prescribed by the constitution and by giving a bond in the amount required of a *county* public administrator ~~in a county of the same class. The director must receive from the state as part of the director's salary the same amount that is paid by the state to county attorneys in counties of the same class, and the remainder of the salary must be paid by the municipality~~. For all purposes in connection with criminal prosecutions, the director must be known and designated as "county attorney of the city and county of .....".

Section 10. Section 7-4-2405, MCA, is amended to read:

"7-4-2405. Appointment of deputies in certain counties ~~of seventh class~~. (1) ~~In any county of the seventh class having less than 2,000 population, there shall not be appointed any~~ *A* deputy county officer or deputy designated by ~~any~~ *a* county officer ~~of such county unless the appointment of such deputy, designating the term of service and compensation thereof, shall be first authorized by the board of county commissioners of such county~~ *may not be appointed in a county having a taxable valuation of less than $5 million and a population of less than 2,000 unless the appointment, term of service, and compensation is authorized by the board of county commissioners*.

(2) The board ~~shall~~ *may* not approve any compensation in payment for services of ~~any~~ *a* person appointed by or acting under ~~any~~ *an* elected or

appointed officer of ~~said~~ *the* county ~~whose~~ *if the person's* appointment~~, as herein provided, shall not have been authorized and approved by the board of such county~~ *has not been authorized by the board as provided in this section*."

Section 11. Section 7-4-2601, MCA, is amended to read:

"7-4-2601. Limitation on number of deputy county clerks. The ~~whole~~ number of deputies allowed the county clerk ~~must~~ *may* not exceed:

(1) six in counties ~~of the first and second classes~~ *having a taxable valuation of $30 million or more*;

(2) three in counties ~~of the third class~~ *having a taxable valuation of $20 million or more and less than $30 million*;

(3) two in counties ~~of the fourth and fifth classes~~ *having a taxable valuation of $10 million or more and less than $20 million*;

(4) one in counties ~~of the sixth and seventh classes~~ *having a taxable valuation of less than $10 million*."

Section 12. Section 7-4-2602, MCA, is amended to read:

"7-4-2602. Designation of chief deputy by county clerk. The county clerk ~~in counties of the first class~~ may designate ~~one of the~~ *a* deputy ~~clerks~~ *clerk* as chief deputy clerk."

Section 13. Section 7-4-2703, MCA, is amended to read:

"7-4-2703. Limitation on number of deputies. In counties ~~of the first and second class~~ *having a taxable valuation of $30 million or more*, the county attorney may appoint one chief deputy and one deputy. In all other counties, the county attorney may appoint a chief deputy or a deputy only with the approval of the board of county commissioners."

Section 14. Section 7-4-2705, MCA, is amended to read:

"7-4-2705. Employment of special counsel in certain counties. Except in counties ~~of the first class~~ *having a taxable valuation of $50 million or more*, the board of county commissioners ~~has the power, whenever in its judgment the ends of justice or the interest of the county require it, to~~ *may* employ or authorize the county attorney to employ special counsel to assist in the prosecution of any criminal case pending in ~~such~~ *the* county or to represent ~~said~~ *the* county in any civil action in which ~~such~~ *the* county is a party."

Section 15. Section 7-4-3006, MCA, is amended to read:

"7-4-3006. Limitation on number of deputy district court clerks. The ~~whole~~ number of deputies allowed the clerk of the district court may not exceed one chief deputy and up to:

(1) six deputies in counties ~~of the first or second class~~ *having a taxable valuation of $30 million or more*;

(2) four deputies in counties ~~of the third or fourth class~~ having *a taxable valuation of $15 million or more and less than $30 million and having* more than one district judge;

(3) two deputies in counties ~~of the third or fourth class~~ having *a taxable valuation of $15 million or more and less than $30 million and having* one district judge;

(4) one deputy in counties ~~of the fifth, sixth, or seventh class~~ *having a taxable valuation of less than $15 million*."

Section 16. Section 7-6-2102, MCA, is amended to read:

"7-6-2102. Limitation on number of deputy county treasurers. (1) Except as provided in subsection (2), the ~~whole~~ number of deputies allowed the county treasurer ~~must~~ *may* not exceed:

(a) two in counties ~~of the first class~~ *having a taxable valuation of $50 million or more*;

(b) one in counties ~~of all other classes~~ *having a taxable valuation of less than $50 million*.

(2) The board of county commissioners may allow ~~such~~ additional deputies as may be necessary during the months of November and December of each year."

Section 17. Section 7-6-2401, MCA, is amended to read:

"7-6-2401. Creation of office of county auditor. (1) The office of county auditor exists in all counties ~~of the first, second, third, or fourth class that have~~ *having* a population in excess of 15,000.

(2) County commissioners in counties to which subsection (1) does not apply may create a county auditor's position, either as a full-time or a part-time position or in combination with another position pursuant to 7-4-2301.

(3) The provisions of 7-6-2403 through 7-6-2412 do not apply to counties that do not have county auditors."

Section 18. Section 7-6-2413, MCA, is amended to read:

"7-6-2413. Limitation on number of deputy county auditors. ~~The whole number of deputies allowed to county auditors must not exceed one in counties of the first, second, and third classes~~ *A county auditor may not have more than one deputy*."

Section 19. Section 7-21-3211, MCA, is amended to read:

"7-21-3211. Employment of stock inspector. (1) ~~Whenever the board of county commissioners is satisfied, from its own knowledge or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise disposed of contrary to law in the county and in a manner that the public officers of the county are not in a position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution, the board of each county, except in counties of the first class, has the power to employ a stock inspector~~ *A board of county commissioners may employ a stock inspector if:*

(a) the board has found, based on information that the board has gathered or that has been provided to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise illegally disposed of; and

(b) the county officers are unable to apprehend the individuals suspected of the offense or obtain the necessary evidence on which to base a prosecution.

(2) ~~Whenever~~ *When* a stock inspector is employed, the employment is only for the case or cases then under investigation. During the ~~existence of the appointment~~ *inspector's employment*, the inspector is vested with the same police power and authority as the sheriff, within the limitation of the purposes for which the inspector is ~~appointed~~ *employed*."

Section 20. Section 7-22-2142, MCA, is amended to read:

"7-22-2142. Sources of money for noxious weed fund. (1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from ~~the general fund of the county~~ *any source in an amount not less than $100,000 or an amount equivalent to 1.6 mills levied upon the taxable value of all property*; and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county ~~or by contributing an equivalent amount from another source of not less than the amount received from all county sources in fiscal year 2000 or, for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal year 2000 or $100,000~~. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

(5) ~~The~~ *Subject to 15-10-420,* commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. ~~The~~ *Pursuant to an election held in accordance with 15-10-425, the* amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone."

Section 21. Section 7-32-101, MCA, is amended to read:

"7-32-101. Department of public safety authorized. In counties ~~other than first- and second-class counties~~ *having a taxable valuation of less than $30 million*, on agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established a department of public safety in lieu of a police department and a sheriff's office."

Section 22. Section 7-32-2102, MCA, is amended to read:

"7-32-2102. Undersheriff to be appointed — return to other duties. (1) The sheriff, as soon as possible after taking office, shall, except in counties ~~of the seventh class~~ *with a population of less than 750*, appoint an undersheriff to serve at the pleasure of the sheriff. The undersheriff has the same powers and duties as a deputy sheriff.

(2) A deputy sheriff appointed undersheriff as provided in subsection (1) shall resume other duties within the sheriff's office, while maintaining tenure and seniority, if the sheriff appoints another to succeed the deputy sheriff as undersheriff. Upon the return to the position of deputy sheriff, the person must be paid the same salary the person would have received had the person not taken the undersheriff position."

Section 23. Section 7-32-2111, MCA, is amended to read:

"7-32-2111. Hours of work for deputy sheriff ~~of county of first or second class~~. ~~Any~~ *A* person employed as a deputy sheriff of a ~~first- or~~

~~second-class~~ county ~~shall not be forced~~ *having a taxable valuation of $30 million or more may not be required* to work in excess of 40 hours ~~per~~ *a* week except in case of an emergency and ~~shall be~~ *is* entitled to 2 days off in each 7-day period."

Section 24. Section 13-17-101, MCA, is amended to read:

"13-17-101. Secretary of state to approve voting systems. (1) A voting system may not be used for any election in this state unless the system is approved by the secretary of state as provided in this section.

(2) The secretary of state shall:

(a) examine a voting system proposed for use to determine if it complies with the requirements of 13-17-103;

(b) within 30 days after examining the voting system, file a report of the examination in the secretary of state's office;

(c) include in the report the reasons for the voting system's approval or disapproval and the secretary of state's opinion about the economic and procedural impact that the voting system's use or nonuse may have on the various ~~classes of~~ counties of this state; and

(d) within 5 days after filing the report, transmit to each election administrator, including school election administrators for elections under Title 20, chapter 20, a copy of the report.

(3) Voting systems may not be used in an election unless approved by the secretary of state 60 days or more prior to the election at which they will be used."

Section 25. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds — taxable value for ~~county classification and~~ nontax purposes. (1) (a) The department shall compute from the reported value of coal gross proceeds a tax roll that must be transmitted to the county treasurer on or before September 15 of each year. The department may not levy or assess any mills against coal gross proceeds but shall, subject to subsection (1)(b), levy a tax of 5% against the value of coal as provided in 15-23-701(4). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(b) If the county grants a tax abatement for production from a new or expanding underground mine as provided in 15-23-715, the department shall levy a tax at a rate that would, after providing for payment to the state of the amount attributable to all applicable state mill levies as if the tax rate were 5%, reduce the tax received by county taxing jurisdictions and any school district on the new or expanded production by 50%.

(2) For ~~county classification and~~ all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) (a) Except as provided in subsections (4) and (7) and subject to subsection (3)(b), coal gross proceeds taxes must be allocated to the state, county, and school districts in the same relative proportions as the taxes were distributed in fiscal year 1990.

(b) The county treasurer shall multiply the coal gross proceeds taxes collected in the county under this part by the relative proportions determined for the state, county, and school districts under subsection (3)(a). Those amounts must be distributed as follows:

(i) the state share must be distributed in the relative proportions required by levies for state purposes in the same manner as property taxes were distributed in fiscal year 1990;

(ii) except as provided in subsection (5), the county share must be distributed in the relative proportions required by levies for county purposes, other than an elementary school or high school, in the same manner as property taxes were distributed in the previous fiscal year;

(iii) except as provided in subsection (6), the school districts' share must be distributed in the relative proportions required by levies for school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(4) If there is a distribution of coal gross proceeds from a new or expanding underground mine with a tax abatement as provided under 15-23-715, the county treasurer shall distribute:

(a) the state's share of the coal gross proceeds determined under subsection (1)(b) in the relative proportion required by the appropriate levies for state purposes; and

(b) the county's share and any school district's share of the coal gross proceeds determined under subsection (1)(b) as provided in this section.

(5) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (3)(b)(i), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in the previous fiscal year.

(b) If the allocation in subsection (5)(a) exceeds the total budget of a taxing unit, the commissioners may direct the county treasurer to reallocate the excess to any taxing unit within the county.

(6) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in the previous fiscal year.

(b) If the allocation under subsection (6)(a) exceeds the total budget for a fund, the trustees may reallocate the excess to any budgeted fund of the school district.

(7) Except as provided in subsections (8) and (9), the county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(8) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds under subsection (7) in the same manner as provided in subsection (5).

(9) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county

treasurer under subsection (7) in the same manner as provided in subsection (6)."

Section 26. Section 15-24-3001, MCA, is amended to read:

"15-24-3001. Electrical generation and transmission facility exemption — definitions. (1) (a) Except as provided in subsections (1)(b) and (3), an electrical generation facility and related delivery facilities constructed in the state of Montana after May 5, 2001, and before January 1, 2006, may be exempt from property taxation for a 10-year period beginning on the date that an owner or operator of an electrical generation facility and related delivery facilities commences to construct the facility as defined in 75-20-104(6)(a) and (6)(b). In order to be exempt from property taxation, an owner and operator of an electrical generation facility and related delivery facilities shall offer contracts to sell 50% of that facility's net generating output at a cost-based rate, which includes a rate of return not to exceed 12%, to customers for a 20-year period from the date of the facility's completion.

(b) The property tax exemption allowed under subsection (1)(a) is limited to a 5-year period for generation facilities powered by oil or gas turbines.

(2) To the extent that 50% of the net generating output of the facility is not contracted for delivery to consumers for a contract term extending 5 years to 20 years from the completion of the facility, as determined by the owner, surplus capacity must be offered on a declining contract term basis for the remainder of the contract period at a cost-based rate that includes a rate of return not to exceed 12%. Surplus capacity that is not contracted for in this fashion may be sold at market rates.

(3) (a) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(a) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(b) Except as provided in subsection (3)(c), if an owner or operator of property exempt from taxation under subsection (1)(b) signs a contract to sell power as required in subsection (1) and then fails to perform the contract during the first 5-year period, the 5-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in 15-24-3002.

(c) If an owner or operator fails to perform the contract due to earthquakes or other acts of God, theft, sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection (1)(a) or (1)(b) is not void and the owner or operator is not subject to the rollback tax as provided in 15-24-3002.

(4) For the purposes of this section, the following definitions apply:

(a) (i) "Electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce 20 average megawatts or more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(ii) The term does not include:

(A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes; or

(B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

(b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the electrical generation facility to the existing network transmission system.

(c) "Surplus capacity" means that portion of the 50% of net generating output not contracted for use.

(5) The department shall appraise exempt electrical generation facilities for each year that the property is exempt and determine the taxable value of the property as if it were subject to property taxation. ~~The taxable value determined by the department must be included as taxable valuation for the purposes of county classification under 7-1-2111.~~"

Section 27. Section 15-36-332, MCA, is amended to read:

"15-36-332. Distribution of taxes to taxing units — appropriation. (1) (a) By the dates referred to in subsection (6), the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) By the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil and gas natural resource distribution account under 15-36-331(2)(b) as provided in subsection ~~(8)~~ *(7)* of this section.

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%

Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d).

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) (a) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund.

(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.

(6) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

~~(7) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111.~~

~~(8)~~*(7)* The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

~~(9)~~*(8)* The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund."

Section 28. Section 15-39-110, MCA, is amended to read:

"15-39-110. Distribution of taxes. (1) (a) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that produced bentonite before January 1, 2005. The tax is distributed as provided in subsections (2) through (9).

(b) For each semiannual period, the department shall determine the amount of tax, late payment interest, and penalties collected under this part from bentonite mines that first began producing bentonite after December 31, 2004. The tax is distributed as provided in subsection (10).

(2) The percentage of the tax determined under subsection (1)(a) and specified in subsections (3) through (9) is allocated according to the following schedule:

(a) 2.33% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 15-10-108;

(b) 18.14% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 3.35% to Carbon County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-108, 20-9-331, 20-9-333, and 20-9-360; and

(d) 76.18% to Carter County to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county and state levies under 15-10-108, 20-9-331, 20-9-333, and 20-9-360.

(3) For the production of bentonite occurring after December 31, 2008, and before January 1, 2010, 60% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 40% must be distributed as provided in subsection (10).

(4) For the production of bentonite occurring after December 31, 2009, and before January 1, 2011, 50% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 50% must be distributed as provided in subsection (10).

(5) For the production of bentonite occurring after December 31, 2010, and before January 1, 2012, 40% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 60% must be distributed as provided in subsection (10).

(6) For the production of bentonite occurring after December 31, 2011, and before January 1, 2013, 30% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 70% must be distributed as provided in subsection (10).

(7) For the production of bentonite occurring after December 31, 2012, and before January 1, 2014, 20% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 80% must be distributed as provided in subsection (10).

(8) For the production of bentonite occurring after December 31, 2013, and before January 1, 2015, 10% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (2) and 90% must be distributed as provided in subsection (10).

(9) For the production of bentonite occurring in tax years beginning after December 31, 2014, 100% of the tax determined under subsection (1)(a) must be distributed as provided in subsection (10).

(10) For the production of bentonite, 100% of the tax determined under subsection (1)(b) and the distribution percentages determined under subsections (3) through (9) are allocated according to the following schedule:

(a) 1.30% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 15-10-108;

(b) 20.75% to the state general fund to be appropriated for the purposes of the tax levies as provided in 20-9-331, 20-9-333, and 20-9-360;

(c) 77.95% to the county in which production occurred to be distributed in proportion to current fiscal year mill levies in the taxing jurisdictions in which

production occurs, except a distribution may not be made for county and state levies under 15-10-108, 20-9-331, 20-9-333, and 20-9-360.

(11) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before October 1 of each year, the department shall remit the county's share of bentonite production tax payments received for the semiannual period ending June 30 of the current year to the county treasurer.

(b) On or before April 1 of each year, the department shall remit the county's share of bentonite production tax payments received to the county treasurer for the semiannual period ending December 31 of the previous year.

(12) (a) The department shall also provide to each county the amount of gross yield of value from bentonite, including royalties, for the previous calendar year. Thirty-three and one-third percent of the gross yield of value must be treated as taxable value ~~for county classification purposes under 7-1-2111 and~~ for determining school district debt limits under 20-9-406.

(b) The percentage amount of the gross yield of value determined under subsection (12)(a) must be treated as assessed value under 15-8-111 for the purposes of local government debt limits and other bonding provisions as provided by law.

(13) The bentonite tax proceeds are statutorily appropriated, as provided in 17-7-502, to the department for distribution as provided in this section."

Section 29. Section 30-14-122, MCA, is amended to read:

"30-14-122. Employment of investigator by county attorney. The county attorney in ~~first- and second-class~~ counties *having a taxable valuation of $30 million or more* may designate an employee to act as a full-time investigator."

Section 30. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, on all contracts let by them, and for all janitors (except in courthouses of ~~sixth- and seventh-class~~ counties *having a taxable valuation of less than $10 million*), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by a municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. An employee may not be required to work in excess of 8 hours in any one workday if the employee prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when a bargaining unit is not recognized."

Section 31. Section 80-7-814, MCA, is amended to read:

"80-7-814. Administration and expenditure of funds. (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches $10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall deposit any reverted funds into the noxious weed management trust fund as principal.

(3) The principal of the noxious weed management trust fund in excess of $10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of $10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with *the lesser of:*

(a) a levy in an amount not less than 1.6 mills or an equivalent amount from another source*;* or

(b) by *appropriating* an amount of not less than $100,000 ~~for first-class counties, as defined in 7-1-2111~~ *from any source*.

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 32. Section 90-6-1001, MCA, is amended to read:

"90-6-1001. Oil, gas, and coal natural resource accounts. (1) There is an oil and gas natural resource distribution account in the state special revenue fund. The collections allocated to the account from 15-36-304(7)(b) must be deposited in the account to be used as provided in ~~15-36-332(8) and (9)~~ *15-36-332(7) and (8)*.

(2) There is a coal natural resource account in the state special revenue fund. The collections allocated to the account from 15-35-108(7) must be deposited in the account. The money in the account is allocated to the coal board provided for in 2-15-1821 and may be used only for local impact grants provided for in 90-6-205 through 90-6-207 and costs related to the administration of the grant awards."

Section 33. Repealer. The following sections of the Montana Code Annotated are repealed:

7-1-2111. Classification of counties.

7-1-2112. Designation of county classification by county commissioners.

Section 34. Effective date. [This act] is effective July 1, 2011.

Approved April 7, 2011

CHAPTER NO. 129

[HB 229]

AN ACT ADDING CERTAIN COMMERCIAL MOTOR VEHICLES TO THE LIST OF MOTOR VEHICLES ON WHICH DEMONSTRATOR LICENSE PLATES MAY BE USED; AND AMENDING SECTION 61-4-129, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-129, MCA, is amended to read:

"61-4-129. Assignment of demonstrator plates. (1) (a) A dealer or wholesaler may purchase demonstrator plates at a fee of $5 a plate.

(b) Demonstrator plates may not be issued to a new or used dealer whose business is restricted to the sale of power sports vehicles.

(2) (a) Except as provided in subsection (2)(c), demonstrator plates may be used on a motor vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), or *on* a *truck, truck tractor, truck tractor pulling a laden or unladen semitrailer, or* travel trailer that is:

(i) being demonstrated and offered for sale, for not more than 72 hours when operated by an individual holding a valid operator's license;

(ii) owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) being tested for repair;

(iv) being moved to or from a dealer's place of business for sale;

(v) being moved to or from service and repair facilities before sale; and

(vi) being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Demonstrator plates may be used:

(i) on trailers being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on travel trailers held for sale to demonstrate the towing capability of the motor vehicle, for not more than 72 hours;

(iii) on any motor vehicle owned by the dealer that is used only to move a travel trailer that is in the dealer's inventory; and

(iv) on trailers being moved to or from exhibitions within the state if the exhibition does not exceed a period of 20 days.

(c) Extra demonstrator plates may be made available to dealers eligible for demonstrator plates under subsection (2)(a) to provide to one or more service repair facilities to be used when moving a motor vehicle in the dealer's inventory to and from the dealer's place of business and the service and repair facility prior to sale. A motor vehicle displaying demonstrator plates under this subsection is not required to have a Monroney label or a buyer's guide label as required by 61-4-123(2).

(d) A motor vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the motor vehicle."

Approved April 7, 2011

CHAPTER NO. 130

[HB 250]

AN ACT REPEALING THE STATUTE CODIFYING THE CRIMINAL JUSTICE PROCEDURE REQUIRING A PROSECUTOR TO NOTIFY A DEFENDANT OF AN INTENT TO INTRODUCE EVIDENCE OF PREVIOUS CRIMES; AMENDING SECTION 46-13-110, MCA; REPEALING SECTION 46-13-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in State v. Just, 184 Mont. 262, 602 P.2d 957 (1979), the Montana Supreme Court ordered that notice be given to a criminal defendant by the prosecution that the prosecution intended to introduce evidence of the

commission of previous crimes by the defendant and further specified what was to be contained in that notice to the defendant; and

WHEREAS, on December 14, 2010, the Montana Supreme Court issued its opinion in State v. District Court of the 18th Judicial District, 2010 MT 263, 358 Mont. 325 (2010), holding that State v. Just was wrongly decided and overruling its previous opinion in that case; and

WHEREAS, in its opinion in State v. District Court of the 18th Judicial District, the Supreme Court recommended that the Legislature repeal section 46-13-109, MCA, which codified its opinion in State v. Just.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking persistent felony offender status, 46-13-108;

~~(h) notice of other crimes, wrongs, or acts, 46-13-109;~~

~~(i)~~*(h)* motion to suppress, 46-13-301 and 46-13-302;

~~(j)~~*(i)* motion to dismiss, 46-13-401 and 46-13-402;

~~(k)~~*(j)* motion for change of place of trial, 46-13-203 through 46-13-205;

~~(l)~~*(k)* reasonableness of bail, Title 46, chapter 9; and

~~(m)~~*(l)* stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 2. Repealer. The following section of the Montana Code Annotated is repealed:

46-13-109. Notice by prosecutor of other crimes, wrongs, or acts.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2011

CHAPTER NO. 131

[HB 298]

AN ACT PROVIDING A DEFINITION OF "STEERING AXLE" FOR THE PURPOSES OF GROSS VEHICLE WEIGHT REQUIREMENTS; AND AMENDING SECTION 61-10-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-104, MCA, is amended to read:

"61-10-104. Length — definitions. (1) A single truck, bus, or self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 55 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 1/2 feet each in length or 61 feet in combined trailer length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), and this combination may not have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturer's rated capacity" may not tow more than one trailer or semitrailer, and this combination may not have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck tractor and one pole trailer or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection (5)(a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle combination, as provided in 61-10-124(2), does not apply to the vehicle combination described in this subsection (5)(a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except by special, single-trip permit. Overhang is measured from the center of the rear-most axle to the most distant end of the logs being hauled.

(c) The provisions in subsections (5)(a) and (5)(b) do not apply to a vehicle combination hauling utility poles.

(6) As used in this chapter, the following definitions apply:

(a) "Axle" means a transverse beam that is the common axis of rotation of one or more wheels and that, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation.

(b) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(c) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

(d) "Length", except as provided in subsection (5)(a), means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(e) "Rocky Mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer.

(f) "Steering axle" means an axle that pivots at the hub to allow the wheel to follow the travel of the vehicle. A steering axle is capable of being steered but need not always be connected to a steering wheel."

Approved April 7, 2011

CHAPTER NO. 132

[HB 319]

AN ACT REQUIRING A PERSON BIDDING ON CERTAIN PUBLIC CONSTRUCTION CONTRACTS TO LIST THE PERSON'S SPECIAL FUEL USER'S PERMIT NUMBER ON THE BID, IF APPLICABLE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Listing special fuel permit number. If applicable, a person bidding on a construction contract for road, street, or bridge construction, repair, or maintenance under the provisions of this part shall list the person's special fuel user's permit number issued pursuant to Title 15, chapter 70, part 3, on the bid. A bid without the permit number may not be accepted.

Section 2. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 23, and the provisions of Title 7, chapter 5, part 23, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 43, and the provisions of Title 7, chapter 5, part 43, apply to [section 1].

(3) [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, part 6, and the provisions of Title 20, chapter 6, part 6, apply to [section 1].

(4) [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 1].

Approved April 7, 2011

CHAPTER NO. 133

[HB 324]

AN ACT REVISING THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION AND PLAN; REDUCING THE NUMBER OF INSURANCE REJECTIONS OR RESTRICTIONS REQUIRED UNDER THE "ELIGIBLE PERSON" DEFINITION; INCREASING THE NUMBER OF PUBLIC MEMBERS OF THE ASSOCIATION BOARD; CHANGING PREMIUM LIMITS; INCREASING ELIGIBILITY FOR PREMIUM ASSISTANCE; INCREASING LIFETIME BENEFITS; AMENDING SECTIONS 33-22-1501, 33-22-1504, 33-22-1512, AND 33-22-1521, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1501, MCA, is amended to read:

"33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.

(5) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.

(6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.

(7) (a) "Eligible person" means an individual who:

(i) is a resident of this state and applies for coverage under the association plan;

(ii) is not eligible for any other form of health insurance coverage or health service benefits, except:

(A) for coverage consisting solely of excepted benefits, as defined in 33-22-140; or

(B) subject to eligibility limitations adopted pursuant to 33-22-1502(2), if the individual has coverage comparable to the association plan but is paying a premium or has received a renewal notice to pay a premium that is more than

150% of the average premium rate used to calculate the association plan premium rate pursuant to 33-22-1512(1); and

(iii) meets one or more of the following criteria:

(A) has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least ~~two insurers, societies, or health service corporations~~ *one insurer, society, or health service corporation*, unless the association waives this requirement; or

(B) has had a restrictive rider or preexisting conditions limitation~~, which limitation is~~ required by at least ~~two insurers, societies, or health service corporations,~~ *one insurer, society, or health service corporation* that has the effect of substantially reducing coverage from that received by a person considered a standard risk.

(b) The term does not apply to an individual who is certified as eligible for federal trade adjustment assistance or for pension benefit guaranty corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002, and is eligible for the association portability plan.

(8) "Federally defined eligible individual" means a person who is an individual enrolling in the association portability plan:

(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) who does not have other health insurance coverage;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(e) if the individual elected the continuation coverage described in subsection (8)(e).

(9) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(10) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(11) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(12) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(13) "Medicare" means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

(14) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 3 years immediately preceding the filing of an application.

(15) "Qualified TAA-eligible individual" means an individual and any dependent of that individual, in addition to meeting the requirements specified in subsection (18):

(a) who has 3 months of prior creditable coverage;

(b) whose application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage; and

(c) who, if eligible for COBRA, is not required to elect or exhaust continuation coverage under the COBRA continuation provision or under a similar state program.

(16) "Resident" means an individual who has been legally domiciled in this state for a period of at least 30 days, except that for a federally defined eligible individual there is no 30-day requirement. The criteria for determining residency must be specified in the association's operating rules.

(17) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance.

(18) "TAA-eligible individual" means an individual and any dependent of that individual enrolling in the association portability plan:

(a) who is a resident of this state on the date of application to the pool;

(b) who has been certified as eligible for federal trade adjustment assistance and a health insurance tax credit or for pension benefit guaranty corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002;

(c) who does not have other health insurance coverage; and

(d) who is not covered under a group health plan maintained by an employer, including a group health plan available through a spouse, if the employer contributes 50% or more to the total cost of coverage."

Section 2. Section 33-22-1504, MCA, is amended to read:

"33-22-1504. Association board of directors — organization. (1) There is a board of directors of the association, consisting of ~~eight individuals~~ *nine members as follows*:

(a) one *member* from each of the five participating members of the association with the highest annual premium volume of disability insurance contracts, health maintenance organization health care services agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner;

(b) two members at large who must be participating members of the association, appointed by the commissioner; and

(c) ~~a member~~ *two members* at large, appointed by the commissioner to represent the public interest.

(2) The public interest board members provided for in subsection (1)(c) must be enrolled in a Montana comprehensive health association plan at the time of appointment.

~~(2)~~*(3)* The public interest board ~~member is~~ *members are* entitled to one board vote *each*. Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume. However, a board member may not have more than 50% of the vote.

~~(3)~~*(4)* Members of the board may be reimbursed from the money of the association for expenses incurred by them because of their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and ~~its~~ *reimbursing its* board of directors must be borne by participating members of the association in accordance with 33-22-1513.

~~(4)~~*(5)* The commissioner may replace a board member if the commissioner determines that the board member is not actively participating in the affairs of the board or if the participating member does not appoint a board representative within a reasonable time period. A board member appointed under subsection (1)(a) must be replaced by a participating member of the association with the next highest annual Montana premium volume of disability insurance contracts, health maintenance organization health care service agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner.

~~(5)~~*(6)* The commissioner shall include the applicable premium volume of all affiliates, as defined in 33-2-1101, in making the determination required by subsection (1)(a) or ~~(4)~~ *(5)*."

Section 3. Section 33-22-1512, MCA, is amended to read:

"33-22-1512. Association plan and association portability plan premium. (1) The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of association plan premiums for eligible persons may not exceed ~~200%~~ *150%* of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The schedule of association portability plan premiums for federally defined eligible individuals may not at any time exceed 150% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. The premium rates of the five insurers or health service corporations used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually at the request of the commissioner. The association shall use generally acceptable actuarial principles and structurally compatible rates.

(2) (a) The association, with the approval of the commissioner, may adopt a reduced premium rate schedule that is equitably proportional to the income level for eligible persons who have an income less than or equal to ~~150%~~ *200%* of the federal poverty level. The association may not adopt a reduced premium rate schedule unless it has secured federal, state, or private funding specifically for that purpose and the use of the reduced premium rate schedule is limited to the available federal, state, or private funding.

(b) The association, with the approval of the commissioner, may adopt as many income categories as it finds necessary.

(c) Any person who qualifies for coverage under this section may apply to the association for a reduced premium. However, eligible persons with coverage in the traditional association plan must receive first priority for reduced premiums. By agreement of the association and the commissioner, reduced premiums may be made available to persons eligible for the portability plan.

(d) The association may grant as many reduced premiums as funding sources allow but may not increase overall premium rates to subsidize the reduced premium rate schedule. The association may limit the number of people receiving reduced premiums when funds are not available and may establish a waiting list for reduced premiums, if necessary."

Section 4. Section 33-22-1521, MCA, is amended to read:

"33-22-1521. Association plan — minimum benefits. A plan of health coverage must be certified as an association plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting 33-22-701 through 33-22-705), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) (a) The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least 50% of the covered expenses required by this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but the maximums may not be less than $100,000.

(b) One association plan must be offered with coverage for 80% of the covered expenses provided in this section in excess of an annual deductible that does not exceed $1,000 per person. This association plan must provide a maximum lifetime benefit of at least ~~$500,000~~ *$2 million*.

(c) Covered expenses for plans under subsection (1)(a) and (1)(b) must be paid as specified in provider contracts or, in the absence of a provider contract, at the prevailing charge in the state where the service is provided.

(d) The board may authorize other association plans, including managed care plans as defined in 33-36-103.

(2) Covered expenses for plans offered under subsections (1)(a) and (1)(b) must be for the following medically necessary services and articles when prescribed by a physician or other licensed health care professional and when designated in the contract:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of durable medical equipment, which must be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental;

(l) services of a licensed home health agency, up to a maximum of 180 visits per year;

(m) drugs requiring a physician's prescription that are approved for use in human beings in the manner prescribed by the United States food and drug administration, covered at 50% of the expense, up to an annual maximum of $2,000;

(n) medically necessary, nonexperimental transplants of the kidney, pancreas, heart, heart/lung, lungs, liver, cornea, and high-dose chemotherapy bone marrow transplantation, limited to a lifetime maximum of $150,000, with an additional benefit not to exceed $10,000 for expenses associated with the donor;

(o) pregnancy, including complications of pregnancy;

(p) newborn infant coverage, as required by 33-22-301;

(q) sterilization;

(r) immunizations;

(s) outpatient rehabilitation therapy;

(t) foot care for diabetics;

(u) services of a convalescent home, as an alternative to hospital services, limited to a maximum of 60 days per year;

(v) travel, other than transportation by a licensed ambulance service, to the nearest facility qualified to treat the patients medical condition when approved in advance by the insurer; and

(w) coverage for severe mental illness as required in 33-22-706.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) home and office calls, except as specifically provided in subsection (2);

(ii) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(iii) the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

(iv) oral surgery, except as specifically provided in subsection (2);

(v) that part of a charge for services or articles that exceeds the prevailing charge in the state where the service is provided; or

(vi) care that is primarily for custodial or domiciliary purposes that would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition, except as provided by subsection (2);

(iv) confinement in a private room to the extent that ~~it is in excess of the institution's~~ *the charge exceeds the facility's* charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles ~~the provision of which is~~ *that are* not within the scope of authorized practice of the ~~institution~~ *facility* or individual rendering the services or articles;

(vi) room and board for a nonemergency admission on Friday or Saturday;

(vii) routine well baby care;

(viii) complications to a newborn, unless no other source of coverage is available;

(ix) reversal of sterilization;

(x) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xi) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xii) artificial insemination or treatment for infertility; or

(xiii) breast augmentation or reduction."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2011

CHAPTER NO. 134

[HB 337]

AN ACT REVISING DEFINITIONS RELATED TO FISH AND GAME VIOLATIONS; AND AMENDING SECTIONS 87-1-513, 87-2-101, 87-2-114, AND 87-2-807, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-513, MCA, is amended to read:

"87-1-513. Disposition of proceeds of sale. (1) The money obtained upon the sale of seized property must be retained and accounted for by the department when the person having the property in possession at the time of seizure is prosecuted or when a prosecution of the person is pending. If the person charged with ~~violation of the~~ *violating fish and game* law is ~~found guilty of or forfeits bond for violation of the fish and game laws of the state~~ *convicted or forfeits bond or bail*, the money received for the sale of seized property must be paid ~~over~~ to the state treasurer and be deposited to the credit of the fish and game fund~~,~~ except as provided in subsection (2). If the party from whom the property was taken is not found guilty ~~of any violation of the fish and game laws of this state~~, the money must be paid to the party from whom the game birds, wild animals, fish, or parts or portions thereof were taken. An officer is not liable for any damage ~~on account of~~ *caused by* any search, examination, seizure, or sale. When wild animals, game birds, or fish are seized as provided in this part and the person or persons who killed or captured the wild animals, game birds, or fish cannot be ascertained or when the animals sold were killed pursuant to 87-1-225, then the money received from the sale of the wild animals, game birds,

or fish must be paid directly to the state treasurer. The cost of advertising notice of sale, as required by 87-1-511, must be paid from the fish and game fund.

(2) The proceeds, after the department's cost of conducting the sale and costs incurred in donating game animal meat are deducted, from the sale of seized game animal meat must be deposited in the state special revenue fund to the credit of the department of public health and human services for the purposes of awarding grants to the Montana food bank network in this state. Money from the grants awarded to the Montana food bank network must be used for the processing of donated game animal meat. Any grant funds remaining after donated game animal meat is processed may be used for other appropriate purposes by the Montana food bank network."

Section 2. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in ~~87-1-102, chapter 3, and this chapter~~ *Title 87, chapters 1 through 3*, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(4) "Commission" means the state fish, wildlife, and parks commission.

(5) "Conviction" means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated.

~~(5)~~*(6)* "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

~~(6)~~*(7)* "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(7)~~*(8)* "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); the species perca flavescens (yellow perch); all species of the genus pomoxis (crappie); and the species ictalurus punctatus (channel catfish).

~~(8)~~*(9)* "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any

location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(9)~~*(10)* "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; and mourning doves.

~~(10)~~*(11)* "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(11)~~*(12)* "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

~~(12)~~*(13)* "Person" means individuals, associations, partnerships, and corporations.

(14) "Possession" has the meaning provided in 45-2-101.

~~(13)~~*(15)* "Predatory animals" means coyote, weasel, skunk, and civet cat.

~~(14)~~*(16)* "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(15)~~*(17)* "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(16)~~*(18)* "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

Section 3. Section 87-2-114, MCA, is amended to read:

"87-2-114. Misdemeanor and felony possession of hunting or fishing license or permit — penalties. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of a hunting or fishing license or permit if the person knowingly, as defined in 45-2-101, carries or has physical control over a valid and unused:

(a) hunting license or permit issued to another person while in any location that the species to be hunted may inhabit;

(b) resident hunting license or permit or resident fishing license or permit issued to a nonresident; or

(c) hunting license or permit or fishing license or permit that was issued in violation of applicable law or rule.

(2) The following exceptions apply to the prohibition in subsection (1):

(a) A person may carry or have physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person.

(b) The prohibition does not apply to a properly obtained and validated license or permit attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section is guilty of a misdemeanor and is punishable as provided in 87-1-102(1).

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to

another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued or by knowingly, as defined in 45-2-101, carrying, having physical control of, or selling two or more licenses or permits that were issued in violation of applicable law or rule, is guilty of a felony and upon conviction shall be fined not more than $50,000~~,~~ *or be* imprisoned in the state prison for not more than 5 years, or both.

(5) In addition to the penalties set out in subsections (3) and (4), a person convicted under this section ~~or who pleads guilty to a violation of this section~~ shall ~~lose~~ *forfeit* all hunting, fishing, and trapping permit and license privileges for not less than 3 years ~~or~~ up to a ~~lifetime~~ revocation *for life* from the date of conviction."

Section 4. Section 87-2-807, MCA, is amended to read:

"87-2-807. Taking migratory game birds for propagation — avicultural permit. (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101~~(9)~~, for the purpose of propagation. Before issuing an avicultural permit, the department shall determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

(a) the species of migratory game birds allowed to be taken under the permit;

(b) whether eggs or hatched birds, or both, may be taken;

(c) the number of eggs or hatched birds, or both, that may be taken;

(d) areas in which collection may be made;

(e) means by which collection may be made;

(f) the time period for which the permit is valid; and

(g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates the migratory game birds, and the owner may sell or transfer the birds as private property, subject to any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing the permit.

(5) The department shall adopt rules implementing this section."

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 7, 2011

CHAPTER NO. 135

[HB 338]

AN ACT REVISING STANDARDS AND FEES FOR DOCUMENTS SUBMITTED TO COUNTY CLERKS FOR RECORDING; AND AMENDING SECTIONS 7-4-2636 AND 7-4-2637, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2636, MCA, is amended to read:

"7-4-2636. Standards for recorded documents — exemptions. (1) Unless accompanied by the appropriate fee required in 7-4-2637, a document submitted for recording ~~that conveys an interest in real property~~ must:

(a) be legibly printed or typed in *blue or* black ink ~~in at least 10-point typeface~~ on ~~white~~ *white* paper ~~of not less than 20-pound weight, each page of which must be separated and have dimensions of~~ *that is* either 8 1/2 x 11 inches or 8 1/2 x 14 inches *in size*;

(b) ~~provide the names of the parties to the conveyance on the first or second page of any document with more than one page;~~ *provide the names of the parties to the conveyance on the first or second page of any document with more than one page;*

~~(c)~~*(c)* provide a description of the property *if the document conveys an interest in real property*;

~~(d)~~*(d)* have all signatures, initials, dates, *or* handwriting~~, or notary stamps~~ in blue or black ink;

~~(e)~~*(e)* ~~except as provided in subsection (1)(f) and except for page numbers or other designations,~~ *except as provided in subsection (1)(f) and except for page numbers, initials, or other designations,* have margins that are clear of all markings in the following dimensions:

(i) at least 3 inches at the top of the first page and at least 1 inch at the top of the second and any subsequent pages;

(ii) at least 1 inch on the bottom of each page;

(iii) at least 1/2 inch on the sides of each page~~; and~~*; and*

~~(f) include the name and mailing address of the person to whom the document is to be returned in the margin in the upper left-hand corner of the first page within the 3-inch top margin and between the 1/2-inch side margins of each document submitted and may include legibly printed or typed transactional information~~

(f) include the name and mailing address of the person to whom the document is to be returned in the upper left-hand corner of the first page between the 1/2-inch side margins of each document submitted and may include legibly printed or typed transactional information.

(2) ~~Unless accompanied by the fee required in 7-4-2637, all other documents submitted for recording must meet the requirements of subsections (1)(a), (1)(c), and (1)(f).~~

~~(3)~~(a) Except as provided in subsection ~~(3)(b)~~ *(2)(b)*, only documents submitted for recording and filing that conform to the provisions of ~~subsection (1) or (2)~~ *this section* are considered standard documents for the purposes of 7-4-2637.

(b) Documents that are acknowledged as having been executed prior to April 28, 2007, must be accepted for recording and considered standard documents, regardless of whether they conform to the provisions of ~~subsection (1) or (2)~~ *this section*.

~~(4)~~*(3)* (a) An acknowledgment by a notary is exempt from the color~~, typeface,~~ and *margin* ~~font~~ requirements of this section. *Page numbers, the name and mailing address of the person to whom the document is to be returned, and other administrative information or designations may appear in the margins.*

(b) An officially certified court or other government document, whether from an in-state or out-of-state office, is exempt from the provisions of this section."

Section 2. Section 7-4-2637, MCA, is amended to read:

"7-4-2637. Fees for recording ~~standard~~ documents. (1) Except as provided in 7-4-2631 ~~and subsection (2) of this section~~, the fee for recording a standard document that meets the requirements of 7-4-2636 is $7 for each page or fraction of a page.

(2) The fee for recording a document that does not meet the requirements of 7-4-2636 is ~~$11 for each page or fraction of a page for the first five pages or fractions of the pages and $7 for each subsequent page~~ *the fee specified in subsection (1) plus $10*.

(3) (a) Of the fees collected under subsection (1):

(i) $1 must be deposited in the records preservation fund, provided for in 7-4-2635;

(ii) 25 cents must be deposited in the county land information account provided for in 7-6-2230;

(iii) 75 cents must be transmitted each month to the department of revenue in the manner prescribed by the department of revenue for deposit in the Montana land information account created in 90-1-409; and

(iv) the remainder must be deposited as provided for in 7-4-2511.

(b) ~~Of the~~ *The* fees collected under subsection (2) ~~for nonstandard documents, each $7 amount for a page or fraction of a page must be deposited as provided for in subsection (3)(a). The remaining $4 of each $11 charge for a page or fraction of a page~~ must be deposited in the records preservation fund~~,~~ provided for in 7-4-2635~~, and, notwithstanding 7-4-2635(3), each $4 amount from an $11 charge for a page or a fraction of a page may be used only for maintaining, upgrading, or installing systems to digitally record and retrieve documents~~."

Approved April 7, 2011

CHAPTER NO. 136

[HB 401]

AN ACT REVISING THE DEFINITION OF "ROTATION AREA" IN THE MONTANA PROFESSIONAL TOW TRUCK ACT; AND AMENDING SECTION 61-8-903, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-903, MCA, is amended to read:

"61-8-903. Definitions. As used in this part, the following definitions apply:

(1) "Boom" means an engineered structure that is either mechanically or hydraulically operated and that is capable of lifting and supporting an overhead, vertical load.

(2) "Commercial tow truck operator" or "operator" means a person, firm, or other entity that owns or operates a commercial tow truck as defined in 61-9-416.

(3) "Department" means the department of justice provided for in 2-15-2001.

(4) "Local government" means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

(5) (a) "Qualified tow truck operator" means a commercial tow truck operator:

(i) that has equipment that:

(A) meets the requirements of 61-8-906, 61-8-907, and 61-9-416; and

(B) has been classified in accordance with 61-8-905;

(ii) that participates in the law enforcement rotation system provided for in 61-8-908; and

(iii) that meets the requirements of subsection (5)(b).

(b) (i) If the operator is a firm or other entity, at least 75% of the employees who operate a tow truck must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(ii) If the operator is an individual, the individual must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(6) "Rotation area" means the base area where a qualified tow truck operator is dispatched and operates. ~~For class C tow truck operators, a rotation area includes at least the entire county in which the operation is located but may be expanded to other counties.~~

(7) "Satellite operation" means a second or subsequent operation in another rotation area."

Approved April 7, 2011

CHAPTER NO. 137

[HB 403]

AN ACT ELIMINATING THE REQUIREMENT THAT LOCAL OPTION CLUSTER DEVELOPMENT AND OPEN SPACE REGULATIONS MANDATE THAT OPEN SPACE IN CLUSTER DEVELOPMENTS MUST SOLELY BE PRESERVED THROUGH AN IRREVOCABLE COVENANT; AMENDING SECTIONS 70-17-203 AND 76-3-509, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-17-203, MCA, is amended to read:

"70-17-203. Covenants that run with land. (1) Except as provided in 70-1-522, every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; ~~and~~

(b) conservation easements pursuant to 76-6-209~~.~~*; or*

(c) a dedication of open space as provided in 76-3-509.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the

covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 2. Section 76-3-509, MCA, is amended to read:

"76-3-509. Local option cluster development regulations and exemptions authorized. (1) If the governing body has adopted a growth policy that meets the requirements of 76-1-601, the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

(a) establish a maximum size for each parcel in a cluster development;

(b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and

(c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. *Land protected as open space on a long-term basis must be identified on the final subdivision plat, and the plat must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels, as provided in Title 70, chapter 17, part 2.* ~~The regulations must require that open space be preserved through an irrevocable conservation easement, granted in perpetuity, as provided for in Title 76, chapter 6, prohibiting further division of the parcel.~~

(3) Regulations adopted under this section may:

(a) establish a shorter timeframe for review of proposed cluster developments;

(b) establish procedures and requirements that provide an incentive for cluster development subdivisions that are consistent with the provisions of this chapter;

(c) authorize the review of a division of land that involves more than one existing parcel as one subdivision proposal for the purposes of creating a cluster development;

(d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided in subsection (3)(c); and

(e) establish exemptions from the following:

(i) the requirements of an environmental assessment pursuant to 76-3-603;

(ii) review of the criteria in 76-3-608(3)(a); and

(iii) park dedication requirements pursuant to 76-3-621.

(4) Except as provided in this section, the provisions of this chapter apply to cluster development subdivisions."

Section 3. Effective date. [This act] is effective July 1, 2011.

Approved April 7, 2011

CHAPTER NO. 138

[HB 432]

AN ACT ALLOWING BANKS AND CREDIT UNIONS TO OFFER DEBT CANCELLATION OR SUSPENSION PROGRAMS IF AUTHORIZED BY THE DEPARTMENT OF ADMINISTRATION; REQUIRING THE DEPARTMENT TO ADOPT RULES GOVERNING DEBT CANCELLATION AND

SUSPENSION PROGRAMS; PROVIDING THAT DEBT CANCELLATION AND SUSPENSION PROGRAMS OFFERED BY BANKS AND CREDIT UNIONS ARE NOT INSURANCE PRODUCTS SUBJECT TO THE MONTANA INSURANCE CODE; AND AMENDING SECTIONS 32-1-429 AND 32-3-609, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-429, MCA, is amended to read:

"32-1-429. Insurance activities — *exemption — rulemaking.* (1) A bank or a bank's subsidiary or affiliate may:

(a) except *for* title insurance, sell insurance of all types, including annuities, credit life insurance, and disability insurance; and

(b) act as an insurance producer, adjuster, consultant, or administrator as defined in Title 33, chapter 17.

(2) A bank or a bank's subsidiary or affiliate that engages in insurance activities authorized in subsection (1) is subject to the provisions of Title 33.

(3) A bank or bank's subsidiary or affiliate may, upon application to and approval by the department pursuant to 32-1-362, offer debt cancellation and suspension programs. Debt cancellation or suspension programs offered pursuant to this subsection are not insurance products subject to the provisions of Title 33. The department shall adopt rules to implement this subsection that must be substantially equivalent to or more stringent than federal laws, regulations, and regulatory guidelines that are applicable to debt cancellation or suspension programs offered by national banks."

Section 2. Section 32-3-609, MCA, is amended to read:

"32-3-609. Insurance for members — *debt cancellation and suspension programs.* *(1)* A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, or loan balances or to any combination of them.

(2) A credit union may, upon application to and approval by the department of administration pursuant to 32-3-206, offer debt cancellation and suspension programs. Debt cancellation or suspension programs offered pursuant to this subsection are not insurance products subject to the provisions of Title 33. The department shall adopt rules to implement this subsection that must be substantially equivalent to or more stringent than federal laws, regulations, and regulatory guidelines that are applicable to debt cancellation or suspension programs offered by federal credit unions."

Approved April 7, 2011

CHAPTER NO. 139

[HB 449]

AN ACT REVISING PENALTIES FOR THE INTENTIONAL, UNLAWFUL IMPORTATION, INTRODUCTION, AND TRANSPLANTATION OF FISH; AND AMENDING SECTION 87-5-721, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-721, MCA, is amended to read:

"87-5-721. Penalty — license and permit revocation and denial. (1) Except as provided in subsection (2), a person ~~who violates a provision~~ *convicted of a violation* of this part is guilty of a misdemeanor punishable as provided in

87-1-102~~,~~. ~~and~~ *In addition,* the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than ~~$500~~ *$2,000* or more than ~~$5,000~~ *$10,000* and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend ~~$500~~ *$2,000* of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued ~~under this title~~ *by this state* and the privilege to hunt, fish, or trap in this state for not less than ~~24 months~~ *5 years or more than 10 years*. If the time necessary to eliminate or mitigate the effects of the violation exceeds ~~24 months~~ *the imposed forfeiture period*, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for ~~more than 24 months~~ *an additional period of time*. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for ~~the lifetime of that person~~ *life*.

(3) Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within a time set by the department, not to exceed 6 months. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 7, 2011

CHAPTER NO. 140

[HB 467]

AN ACT EXPANDING THE INDIVIDUAL INCOME TAX AND CORPORATE LICENSE TAX CREDIT FOR CONTRIBUTIONS TO FOUNDATIONS AND ENDOWMENT FUNDS OF A UNIVERSITY OR COLLEGE TO INCLUDE FOUNDATIONS AND ENDOWMENT FUNDS OF COMMUNITY COLLEGES, TRIBAL COLLEGES, AND UNITS OR CAMPUSES OF THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 15-30-2326,

15-31-135, 15-31-136, AND 20-26-603, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-2326, MCA, is amended to read:

"15-30-2326. Credit for contributions to university ~~system~~ or ~~private~~ college foundations *and endowment funds.* (1) *(a)* An individual, corporation, partnership, or small business corporation, as defined in 15-30-3301, is allowed a tax credit against taxes imposed by 15-30-2103 or 15-31-101 in an amount equal to 10% of the aggregate amount of charitable contributions made by the taxpayer during the year to *a foundation or a general endowment fund of:*

(i) ~~any of the general endowment funds of~~ the Montana university system *or any unit or campus of the Montana university system;*

(ii) ~~foundations or a general endowment fund of~~ a Montana private college ~~or its foundation~~*;*

(iii) a Montana community college that is part of a community college district defined and organized as provided in 20-15-101; or

(iv) a tribal college located in Montana that meets the requirements of 25 U.S.C 1804.

(b) The maximum credit that a taxpayer may claim in a year under this section is $500. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(3) (a) For the purposes of this section, "foundation" means a nonprofit organization that is created exclusively for the benefit of any unit of the Montana university system*,* ~~or~~ a Montana private college*, a community college, or a tribal college* and that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(b) For the purposes of this section, "Montana private college" means a nonprofit private educational institution:

(i) whose main campus and primary operations are within the state; and

(ii) that offers *education on the level of an associate degree or a* baccalaureate degree ~~level education~~ and is accredited for that purpose by a national or regional accrediting agency recognized by the board of regents of higher education."

Section 2. Section 15-31-135, MCA, is amended to read:

"15-31-135. Contribution by small business corporation. A contribution to a *foundation or a* general endowment fund of ~~the Montana university system or a Montana private college by a small business corporation, as defined in 15-30-3301,~~ *certain universities and colleges by a small business corporation* qualifies for the credit ~~in~~ *under the provisions of* 15-30-2326. The credit must be attributed to shareholders~~,~~ using the same proportion used to report the corporation's income or loss for Montana income tax purposes."

Section 3. Section 15-31-136, MCA, is amended to read:

"15-31-136. Contribution by partnership. A contribution to a *foundation or a* general endowment fund of ~~the Montana university system or a Montana private college~~ *certain universities and colleges* by a partnership qualifies for the credit ~~in~~ *under the provisions of* 15-30-2326. The credit must be

attributed to partners~~,~~ using the same proportion used to report the partnership's income or loss for Montana tax purposes."

Section 4. Section 20-26-603, MCA, is amended to read:

"20-26-603. Definitions. As used in this part, the following definitions apply:

(1) "Accredited" means a school that is accredited by the board of public education pursuant to 20-7-102.

(2) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

(3) "Council" means the governor's postsecondary scholarship advisory council created in 2-15-1524.

(4) "Montana private college" means a nonprofit private educational institution ~~as defined in 15-30-2326(3)(b)~~*:*

(a) with its main campus and primary operations located within the state; and

(b) that offers education on the level of a baccalaureate degree and is accredited for that purpose by a national or regional accrediting agency recognized by the board.

(5) "Postsecondary institution" means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal community college located in the state of Montana.

(6) "Scholarship" means a payment toward the cost of attendance at a qualifying postsecondary institution, rounded up to the nearest dollar.

(7) "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Applicability. [This act] applies to tax years beginning after December 31, 2011.

Approved April 7, 2011

CHAPTER NO. 141

[HB 481]

AN ACT DESIGNATING REGIONAL WATER AUTHORITIES AS PUBLIC ENTITIES FOR THE PURPOSE OF ACQUIRING RIGHTS-OF-WAY ON CERTAIN STATE LANDS; AND AMENDING SECTIONS 77-2-103 AND 77-2-351, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-103, MCA, is amended to read:

"77-2-103. Processing of application. (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state.

The compensation must be the full market value of the estate or interest disposed of through the granting of the right-of-way easement, and the damages must be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right-of-way is granted according to the plat, the plat is the official plat of the right-of-way and must be retained in the office of the department.

(2) If the state land over or through which a right-of-way is applied for is under certificate of purchase or sales contract, the purchaser or the purchaser's assignee must be made a party to the proceedings and the purchaser's or assignee's consent in writing to the laying out and establishment of the proposed highway, street, or other easement and to the amount of compensation and damages to be paid must be filed with the board before the right-of-way is granted. The board is the judge of how much compensation and damages must be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, must be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands.

(3) If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the provisions of 77-2-351 related to public entities apply."

Section 2. Section 77-2-351, MCA, is amended to read:

"77-2-351. Sale to or exchange of property with public entity. Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land or for other consideration with another public entity on terms and in a manner that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. In the case of land that is not granted to or held by the state in trust for the support of the common schools, for a state institution, or for another specific purpose, the board may accept as partial or total consideration for the transfer of the land a binding commitment by the transferee to use the property to provide a community service or a benefit that fulfills a public purpose. The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given. As used in this section, "public entity" means any county, city, municipal corporation, school district, *regional water authority provided for in Title 75, chapter 6, part 3,* or special improvement or taxing district."

Approved April 7, 2011

CHAPTER NO. 142

[HB 517]

AN ACT REVISING WEIGHT REQUIREMENTS FOR WEIGH STATIONS; AND AMENDING SECTION 61-10-141, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-141, MCA, is amended to read:

"61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — definition. (1) (a) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110, except recreational vehicles, travel trailers, or motor homes, by

means of either portable scales used on an engineered site or stationary scales. The peace officer, officer of the highway patrol, or employee of the department of transportation may require that the vehicle be driven to the nearest stationary scales or engineered site for use of portable scales if those stationary scales or an engineered site is within 2 miles.

(b) If it is determined in the weighing process that the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 have been exceeded, the peace officer, officer of the highway patrol, or employee of the department of transportation may then require the driver to unload at a designated facility that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110. If the excess weight does not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.

(2) Commodities and material unloaded as required by this section must be cared for by the owner or operator of the vehicle at the risk of that owner or operator. Commodities or material unloaded as required by this section may not be left on the highway right-of-way.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require *all trucks and commercial motor* vehicles~~, except passenger cars and pickup trucks under 14,000 pounds GVW and recreational vehicles that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer~~, *of 26,000 pounds GVW or greater* to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements. The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews when the portable scales are used on an engineered site.

(4) For the purposes of this section, "engineered site" means:

(a) a turnout designed and constructed by the department of transportation that has indents in the pavement to level portable scales; or

(b) a site where leveling pads can be used in strict accordance with all of the manufacturer's manuals and specifications."

Approved April 7, 2011

CHAPTER NO. 143

[HB 523]

AN ACT GENERALLY REVISING THE MONTANA PROFESSIONAL TOW TRUCK ACT; REQUIRING A LETTER OF APPOINTMENT TO PARTICIPATE IN THE LAW ENFORCEMENT ROTATION SYSTEM; PROVIDING REQUIREMENTS FOR A TOW TRUCK OPERATOR TO RECEIVE A LETTER OF APPOINTMENT; REVISING EXISTING DEPARTMENT RULEMAKING AUTHORITY; AND AMENDING SECTIONS 61-8-903, 61-8-904, AND 61-8-908, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Letter of appointment — requirements. (1) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 without a letter of appointment from the department.

(2) The department may assign a letter of appointment to a commercial tow truck operator if the operator meets the following requirements:

(a) Each towing business must be operated independently. One company cannot be dependent on another for any required operation.

(b) If the operator owns more than one towing business, each business must have a different identifiable name, address, and telephone number that is answered at the business location during normal business hours. An after-hours central dispatch center may receive calls for multiple businesses if the dispatch center is capable of acknowledging each individual call by the applicable company name.

(c) The operator shall provide adequate staffing for each business with personnel who are present at the business location to answer all incoming calls and who are able to release impounded vehicles from 8 a.m. to 5 p.m., Monday through Friday, except for state-recognized holidays. In addition, each business location must be staffed by a sufficient number of drivers for a 24-hour a day operation.

(d) There must be adequate equipment for each company to operate independently. Tow trucks may only be used for the company for which they are registered and within the rotation area for which they are approved by the department unless otherwise specifically provided for by the department.

(e) The operator must have a business location with its own outside entrance, or if a building has one main entrance, the location must have doors clearly marking and separating each business with a sign at the front door and a sign plainly visible from the street indicating the company's name, telephone number, and office hours. Separate businesses in the same rotation area may be housed in one building, but there must be a solid wall from floor to ceiling to separate each business.

(f) Each company shall maintain its own set of required records and books, including but not limited to a vehicle transaction file and billing invoices at its business location. If there is a corporate accountant or bookkeeper for more than one company, all records and files for each company that are required to be maintained at the business location must be maintained separately.

(g) The operator must have impound and storage areas at the business location and in the operator's assigned rotation area that meet the requirements of 61-8-906(3).

(h) The operator shall maintain at least one truck meeting the minimum classification standards set out in 61-8-905.

(3) A qualified tow truck operator may have only one letter of appointment for a business location in a single rotation area. A request for an additional letter of appointment must be for a complete and separate business location that is capable of operating independently within the same or another rotation area and that meets the requirements of subsection (2).

(4) Each letter of appointment must specify the rotation area to which the qualified tow truck operator is assigned.

(5) A commercial tow truck operator may petition the department in writing for a waiver of one or more of the requirements of subsection (2). Except as provided in subsection (6), the department may grant a waiver if it finds that:

(a) the towing service otherwise available within the rotation area is inadequate to meet the needs of the public;

(b) the request has the highway patrol district commander's approval; and

(c) the petition is otherwise reasonable.

(6) In the event a commercial tow truck operator meets all the requirements of this section and receives a letter of appointment in the same rotation area as a qualified tow truck operator that had earlier been granted a waiver pursuant to subsection (5), the department shall rescind the waiver.

(7) A letter of appointment must be issued in the name of the applicant and is not transferable to any other person or business.

(8) A letter of appointment is valid until suspended, superseded, or revoked by the department.

Section 2. Section 61-8-903, MCA, is amended to read:

"61-8-903. Definitions. As used in this part, the following definitions apply:

(1) "Boom" means an engineered structure that is either mechanically or hydraulically operated and that is capable of lifting and supporting an overhead, vertical load.

(2) "Commercial tow truck operator" or "operator" means ~~a person, firm,~~ *an individual, partnership, corporation,* or other *business* entity that owns or operates a commercial tow truck as defined in 61-9-416.

(3) "Department" means the department of justice provided for in 2-15-2001.

(4) "Letter of appointment" means a letter granted by the department pursuant to [section 1] that authorizes the holder to participate in the law enforcement rotation system provided for in 61-8-908.

~~(4)~~*(5)* "Local government" means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

~~(5)~~*(6)* (a) "Qualified tow truck operator" means a commercial tow truck operator:

(i) that has equipment that:

(A) meets the requirements of 61-8-906, 61-8-907, and 61-9-416; and

(B) has been classified in accordance with 61-8-905;

(ii) that participates in the law enforcement rotation system provided for in 61-8-908; ~~and~~

(iii) that meets the requirements of subsection ~~(5)(b)~~ *(6)(b); and*

(iv) that has been issued a letter of appointment pursuant to [section 1].

(b) (i) If the operator is a firm or other entity, at least 75% of the employees who operate a tow truck must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(ii) If the operator is an individual, the individual must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

~~(6)~~*(7)* "Rotation area" means the base area where a qualified tow truck operator is dispatched and operates. For class C tow truck operators, a rotation area includes at least the entire county in which the operation is located but may be expanded to other counties.

~~(7) "Satellite operation" means a second or subsequent operation in another rotation area.~~"

Section 3. Section 61-8-904, MCA, is amended to read:

"61-8-904. Prohibition — exception. (1) A commercial tow truck operator may not operate for compensation upon the public roadways of this state unless the operator complies with the provisions of 61-8-906(1) and 61-8-907.

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 unless the operator complies with the provisions of this part.

(3) Sections 61-8-901 through 61-8-908, ~~and~~ 61-8-910*, and [section 1]* do not apply to a commercial tow truck operator that does not operate for compensation."

Section 4. Section 61-8-908, MCA, is amended to read:

"61-8-908. State law enforcement rotation system — *letter of appointment* — local government rotation system. (1) The department shall establish and maintain an equitable rotation system among qualified tow truck operators that apply to the department in writing to be placed on the system *and receive a letter of appointment under [section 1]*. The rotation system:

(a) must be administered by the highway patrol in a manner that will give priority to public safety;

(b) must be based on the classification of equipment as provided in 61-8-905; and

(c) may include only qualified tow truck operators.

(2) Each qualified tow truck operator participating in the rotation system shall have available and show upon the request of a law enforcement officer:

(a) all Montana motor vehicle identification numbers or department of transportation numbers for the operator's tow trucks operating in the rotation system;

(b) the operator's federal tax identification number; ~~and~~

(c) the operator's company phone number and street address*; and*

(d) the operator's letter of appointment as issued under [section 1].

(3) The operator shall display on both sides of each tow truck the operator's business name, location, and the numbers required by subsection (2)(a). The information required by this subsection must be plainly seen and able to be read at all times.

~~(3) (a) If more than one qualified tow truck operator using a single storage or impoundment facility applies to be placed on the rotation system, the operators shall provide to the complaint resolution committee established in 61-8-912 information regarding each operator's individual accounting system, the information required in subsection (2), and proof that each operator has the insurance required in 61-8-906.~~

~~(b) Based on the information provided to it pursuant to subsection (3)(a), the complaint resolution committee shall, upon written request, verify that operators using a single storage or impoundment facility applying to be placed on the rotation system have individual accounting systems, adequate identification information, and individual insurance policies.~~

~~(4) Only one qualified tow truck operation for each owner may be included on a rotation area list.~~

~~(5) (a) An owner of a qualified tow truck operation who has an existing tow truck operation in a rotation area separate from the rotation area where the owner is participating in the rotation system may establish a satellite operation to be included on a rotation area list if:~~

~~(i) the owner has a business office in the second rotation area;~~

~~(ii) the business office is open and accessible from 8 a.m. to 5 p.m. Monday through Friday;~~

~~(iii) the facilities have a secure yard as provided in 61-8-906(3)(e); and~~

~~(iv) the tow truck operation has a local 24-hour phone number.~~

~~(b) Any charges for towing service from the satellite operation must be calculated from the satellite operation area and not the area of the owner's base operation.~~

(4) Any charges for towing service must be calculated from the operator's business location, as it is assigned on the operator's letter of appointment.

~~(6)~~*(5)* The rotation system is not applicable when the owner or driver of a wrecked or disabled vehicle obstructing a public roadway requests a tow truck operator of the owner's or driver's choice and the operator meets the insurance requirements provided in 61-8-906 and the safety inspection requirements provided in 61-8-907.

~~(7)~~*(6)* (a) (i) The law enforcement officer at the scene of the wreck shall call the qualified tow truck operator that is next on the rotation list if:

(A) a request for a tow truck is not made by the owner or driver;

(B) the requested tow truck cannot respond in a timely manner; or

(C) the law enforcement officer determines that the requested tow truck is unable to handle the wrecked or disabled vehicle.

(ii) If the qualified tow truck operator is not classified to handle the wrecked or disabled vehicle, the officer shall call the qualified tow truck operator next on the rotation list that is classified to handle the wrecked or disabled vehicle.

(b) If a qualified tow truck operator classified to handle the wrecked or disabled vehicle is not reasonably available, the law enforcement officer may request other equipment to remove the hazard.

~~(8)~~*(7)* The department shall administer the state law enforcement rotation system. A qualified tow truck operator may examine the rotation system schedule established by the department in order to determine if the system is being administered in an equitable manner.

~~(9)~~*(8)* A qualified tow truck operator gives implied consent to a reasonable inspection during normal business hours of its premises, vehicles, and equipment by the department of transportation, highway patrol, or a local government to ensure compliance with this part.

~~(10)~~*(9)* A local law enforcement agency may adopt and administer a local law enforcement rotation system that complies with the provisions of this part. A tow truck operator desiring to be placed on the local law enforcement rotation system must be a qualified tow truck operator as provided in this part.

~~(11)~~*(10)* The highway patrol or local law enforcement shall provide upon request a record of rotation system calls for all classes of tow trucks.

~~(12)~~*(11)* Complaints about the rotation system must be referred in writing to the complaint resolution committee established in 61-8-912."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 9, and the provisions of Title 61, chapter 8, part 9, apply to [section 1].

Approved April 7, 2011

CHAPTER NO. 144

[HB 568]

AN ACT CLARIFYING LAWS RELATED TO THE DISPOSITION OF STATE-OWNED WATER PROJECTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; DIRECTING THE DEPARTMENT TO ATTEMPT TO DISPOSE OF THE CATARACT DAM PROJECT; AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Cataract Creek Dam water project is a state water project operated by the Department of Natural Resources and Conservation as successor to the project originally constructed by and through the Montana State Water Conservation Board; and

WHEREAS, the State of Montana in the 1990s authorized the Department of Natural Resources and Conservation to transfer and dispose of components of various state water projects throughout Montana to water user associations interested in taking over the components of the projects; and

WHEREAS, the Cataract Creek Dam project was constructed in the 1950s by the State Water Conservation Board to supply water to irrigators below the dam and resulted in the Cataract Water Users Association being formed to contract with the Department to market and distribute the project's water; and

WHEREAS, the project has never been identified in previous disposal efforts as a project that could be disposed of to the users of the system; and

WHEREAS, the Cataract Water Users Association has expressed interest in taking over the project from the Department, if economically feasible, to own and operate the system, to make necessary repairs and improvements to the project so that water from the system could be used for the benefit of the users, and to address shortcomings with the project that have not been addressed by the state over the years during which the project has been owned by the Department or its predecessor.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-211, MCA, is amended to read:

"85-1-211. Management of property — water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges to provide at all times funds that are sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the works, and that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of the rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) *(a)* The department may sell, transfer to water users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way, easements, properties, or interests or otherwise take and receive the income or profit and revenue from property without regard to other laws providing for the disposition of state property. Except for a water project for which no water management contracts are managed by the department and for which no money is collected by the department, prior to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests. In the disposal of a project, the department shall comply with the provisions of 85-6-109 and shall give purchase preference to existing water users' associations operating and maintaining the project proposed for disposal.

(b) Subject to the provisions of subsection (5)(a) the department shall attempt to dispose of the Cataract Creek Dam project by June 30, 2013.

(6) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection of the project that the department considers necessary, entry to salvage or remove project property, and entry to make physical alterations to project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2011

CHAPTER NO. 145

[HB 422]

AN ACT AUTHORIZING PERMIT CONTRACTORS UNDER THE METAL MINE RECLAMATION LAWS TO DIRECTLY INVOICE THE PERMIT APPLICANT; AMENDING SECTION 82-4-335, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material,

construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. Except as provided in subsection (2), a separate operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) *(a)* Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of $500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the

hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2011

CHAPTER NO. 146

[HB 41]

AN ACT PROVIDING THE DEPARTMENT OF ADMINISTRATION WITH DISCRETION TO DESIGNATE AN INDEPENDENT AUDITOR TO PERFORM AN AUDIT OF A LOCAL GOVERNMENT ENTITY; AND AMENDING SECTION 2-7-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-506, MCA, is amended to read:

"2-7-506. Audit by independent auditor. (1) The department may prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.

(2) The department, in consultation with the board, shall adopt rules governing the:

(a) criteria for the selection of the independent auditor;

(b) procedures and qualifications for placing applicants on the roster;

(c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and

(d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department ~~shall~~ *may* designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department in the manner of other claims against the local government entity."

Approved April 8, 2011

CHAPTER NO. 147

[HB 49]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION AND FOR BOND ISSUANCE COSTS; PROVIDING A STATUTORY APPROPRIATION TO THE

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT FOR WATER-RELATED INFRASTRUCTURE PROJECTS WITHIN THE EXTERIOR BOUNDARIES OF THE BLACKFEET INDIAN RESERVATION; CONDITIONING THE ISSUANCE OF THE BONDS AND THE APPROPRIATION ON RATIFICATION OF A WATER RIGHTS COMPACT BY THE BLACKFEET TRIBE, THE LEGISLATURE, AND THE CONGRESS OF THE UNITED STATES; AMENDING SECTIONS 17-7-502 AND 85-20-1505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization of bonds — condition. (1) Subject to subsection (3) and upon request of the director of the department of natural resources and conservation, the board of examiners may issue and sell general obligation bonds in a principal amount not exceeding $16.15 million, of which $16 million is to pay the state's costs for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation as provided for in 85-20-1505 and no more than $150,000 is to pay bond issuance costs.

(2) (a) Except as provided in subsection (2)(b), the proceeds from the bonds authorized under this section must be deposited in a bond proceeds subaccount created in the Blackfeet Tribe water rights compact infrastructure account provided for in 85-20-1505.

(b) The proceeds to pay bond issuance costs must be deposited into a state special revenue account.

(3) The bonds must be sold and issued pursuant to the provisions of Title 17, chapter 5, part 8.

(4) The bonds may not be issued or sold unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the Blackfeet Tribe, the legislature, and the Congress of the United States.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206;

44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; *85-20-1505;* 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 3. Section 85-20-1505, MCA, is amended to read:

"85-20-1505. Blackfeet Tribe water rights compact infrastructure account — use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact infrastructure account. The department shall administer the account.

(2) The Blackfeet Tribe water rights compact infrastructure account may be used only for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation.

(3) Funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.

(4) All interest and other income earned on money in the account must be deposited in the account.

(5) All proceeds of the bonds authorized in [section 1] must be deposited in a bond proceeds subaccount established in the Blackfeet Tribe water rights compact infrastructure account.

(6) Subject to subsection (3), money in the Blackfeet Tribe water rights compact infrastructure account, including the proceeds of the bonds authorized in [section 1] deposited in the bond proceeds subaccount, are statutorily appropriated, as provided in 17-7-502, to the department of natural resources and conservation for the purpose of funding the state's portion of the cost of the Four Horns Project as provided for in the agreement between the Blackfeet Tribe of the Blackfeet Indian reservation and the state of Montana regarding Birch Creek water use, dated January 31, 2008, as may be amended."

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to the Blackfeet Tribe.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, part 15, and the provisions of Title 85, chapter 20, part 15, apply to [section 1].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Two-thirds vote required. Because [section 1] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2011

CHAPTER NO. 148

[HB 77]

AN ACT ELIMINATING THE PUBLISHING POLICY COMMITTEE; AMENDING SECTIONS 18-7-302 AND 18-7-306, MCA; AND REPEALING SECTIONS 2-15-1017, 18-7-303, AND 18-7-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-7-302, MCA, is amended to read:

"18-7-302. Definitions. As used in this part, the following definitions apply:

(1) ~~The term "agency" as used herein includes~~ *"Agency" means* each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

~~(2) The term "committee" means the publishing policy committee created in 2-15-1017.~~

~~(3)~~*(2)* ~~The term "department" as used herein~~ *"Department"* means the department of administration provided for in Title 2, chapter 15, part 10.

~~(4)~~*(3)* ~~The term "public document" includes~~ *"Public document" means* any publication of ~~a state~~ *an* agency *that is* meant for dissemination to the public, but does not include educational materials published by a unit of the university system or the superintendent of public instruction, reports of the legislative auditor, travel promotion materials, standard forms, bid specifications, opinions of the attorney general, opinions of the supreme court, session laws, the Administrative Rules of Montana, *the* Montana Code Annotated, *or* regular periodical publications sold to the general public solely through subscription and newsstand sale~~, or a publication specifically exempted by the publishing policy committee when inclusion of that publication under this part is not considered in the best interests of the state~~."

Section 2. Section 18-7-306, MCA, is amended to read:

"18-7-306. Public disclosure of costs. ~~All~~ *Each agency shall include a public disclosure of costs on all* public documents. ~~caused to be printed by any~~

~~agency of state government shall~~ *The public disclosure must* contain the following statement, with required information inserted, to be printed on the exterior cover of the publication: "... copies of this public document were published at an estimated cost of $... per copy, for a total cost of $..., which includes $... for printing and $... for distribution." This statement ~~shall~~ *must* be printed in the same size type as the ~~body copy~~ *text* of the document and ~~shall~~ *must* be set in a box composed of a 1-point rule. If ~~the committee determines that~~ the cost of publication cannot be reasonably estimated at the time of publication, the publications ~~shall~~ *must* contain the following statement on the exterior cover in lieu of the statement concerning estimated cost: "This document printed at state expense. Information on the cost of publication ~~can~~ *may* be obtained by ~~writing~~ *contacting the* department of administration~~, Helena, Montana~~.""

Section 3. Repealer. The following sections of the Montana Code Annotated are repealed:

2-15-1017. Publishing policy committee.

18-7-303. Duties of committee.

18-7-305. Printed matter prohibitions.

Approved April 8, 2011

CHAPTER NO. 149

[HB 102]

AN ACT REVISING AND CLARIFYING PROBATIONARY AND SUSPENDED DRIVER'S LICENSE PROVISIONS AND PROVISIONS RELATED TO DRIVER REHABILITATION CLASSES FOR OFFENSES OF DRIVING UNDER THE INFLUENCE; SPECIFYING DUI COURT AUTHORITY CONCERNING DRIVER'S LICENSES; AMENDING SECTIONS 61-2-302, 61-5-205, 61-5-208, AND 61-8-734, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization of probationary license by DUI court — definition. (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under 61-8-401 or driving with excessive alcohol concentration under 61-8-406 is participating in a DUI court, the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to 61-8-442 and any other conditions imposed within the scope of the court's authority.

(2) If the participant fails to comply with the court's conditions, the court may revoke the probationary driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court's revocation of the probationary license.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401 or 61-8-406 and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration.

Section 2. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program — participation by offending drivers. (1) The department may establish by administrative rules a driver rehabilitation and improvement program or programs. The programs may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

(2) Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department*, unless the suspension or revocation was for an offense under 61-8-401 or 61-8-406,* may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or

(b) revoked and the person has:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) If a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation action must be terminated and the suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

(9) (a) Except as provided in subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 3. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon certain convictions — duration of action — exceptions. (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) any felony in the commission of which a motor vehicle is used;

(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(e) fleeing from or eluding a peace officer; or

(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) ~~driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or operating a motor vehicle with a blood alcohol concentration of 0.08 or more~~ *a driving offense under 61-8-401 or 61-8-406*;

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208~~(2)(b)~~.

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense."

Section 4. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver's license. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 61-2-302 *and this section*, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) ~~When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall,~~ *Subject to [section 1] and except as provided in subsection (4) of this section:*

(i) upon receiving a report of *a person's* conviction or forfeiture of bail or collateral not vacated *for a first offense under 61-8-401 or 61-8-406*, *the department shall* suspend the driver's license or driving privilege of the person for a period of 6 months~~.~~*;*

(ii) ~~Upon~~ *upon* receiving a report of a *person's* conviction or forfeiture of bail or collateral *not vacated* for a second~~, third, or subsequent~~ offense *under 61-8-401 or 61-8-406* within ~~5 years of the first offense~~ *the time period specified in 61-8-734*, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course, treatment, or both, are completed.

~~(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.~~

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third offense under 61-8-401 or 61-8-406 within the time period specified in 61-8-734, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course, treatment, or both, are completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the

suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 5. Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, ~~61-2-302,~~ 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 2, and the provisions of Title 61, chapter 5, part 2, apply to [section 1].

Section 7. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 8, 2011

CHAPTER NO. 150

[HB 110]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION STATUTES; REQUIRING WORKERS' COMPENSATION INSURERS AND THEIR AGENTS TO PAY MEDICAL PROVIDERS ON A TIMELY AND APPROPRIATE BASIS AND PROVIDING PENALTIES ON THE INSURER FOR FAILURE TO DO SO; CLARIFYING THE GROUNDS ON WHICH AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE MAY BE REVOKED; CLARIFYING THAT INTEREST ON A SECURITY DEPOSIT ACCRUES TO THE INSURER; AMENDING SECTIONS 39-71-107, 39-71-418, AND 39-71-2215, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state claims examiners — *third-party agents* — *penalties.* (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

(b) The department may assess a penalty not to exceed $200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.

(5) (a) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer that uses a third-party agent to review medical bills shall, when first using the agent's services and annually in subsequent years, obtain written certification from the agent that, for each bill the agent reviews, the agent agrees to calculate the payment due based on the Montana workers' compensation medical fee schedules, provided for under 39-71-704, that were in effect on the date the service was provided.

(b) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer whose agent neglects or fails to use the proper fee schedule may be assessed a penalty of not less than $200 or more than $1,000 for each bill that its agent reviews under a fee schedule other than the proper Montana fee schedule.

(c) An insurer that without good cause neglects or fails to pay undisputed medical bills on an accepted liability claim within 60 days of receipt of the bill may be assessed a penalty of not less than $200 or more than $1,000 for each bill that is the subject of a delay as provided in this subsection (5)(c).

~~(5)~~*(6)* An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits are denied to a claimant, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

~~(6)~~*(7)* An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(8) An insurer may contest a penalty assessed pursuant to subsection (4) or (5) in a hearing conducted according to department rules. A party may appeal the final agency order to the workers' compensation court. The court shall review the order pursuant to the requirements of 2-4-704.

~~(7)~~*(9)* The department may adopt rules to implement this section.

~~(8)~~*(10)* (a) For *the* purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 2. Section 39-71-418, MCA, is amended to read:

"39-71-418. Suspension or revocation of independent contractor exemption certificate. (1) The department may suspend an independent contractor exemption certificate for a specific business relationship if the department determines that the employing unit exerts or retains a right of control to a degree that causes a certificate holder to violate the provisions of 39-71-417(4).

(2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:

(a) ~~provided~~ *made* misrepresentations in the application affidavit or certificate renewal form;

(b) altered or amended the application form, the renewal application form, other supporting documentation required by the department, or the independent contractor exemption certificate; ~~or~~

(c) failed to cooperate with the department in providing information relevant to the continued validity of the holder's certificate*; or*

(d) does not have an independently established business as required by 39-71-417(4).

(3) A decision by the department to suspend or revoke an independent contractor exemption certificate takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers' Compensation Act for the period prior to notice to the hiring agent by the department of the department's decision to suspend or revoke the independent contractor exemption certificate.

(4) A decision by the department's independent contractor central unit to suspend or revoke an independent contractor exemption certificate may be contested in the same manner as provided in 39-71-415(2)."

Section 3. Section 39-71-2215, MCA, is amended to read:

"39-71-2215. Security deposit to ensure payment of liability of plan No. 2 insurer. (1) Except as provided in subsection (7), a plan No. 2 insurer issuing or renewing a policy on or after January 1, 2008, shall post a security deposit with the department as provided by this section. The purpose of the security deposit is to provide a ready source of funds to pay claims arising under this chapter if the plan No. 2 insurer:

(a) becomes insolvent;

(b) is placed in receivership;

(c) declares bankruptcy;

(d) seeks protection from its creditors; or

(e) is otherwise unwilling or unable to pay its liabilities arising under this chapter.

(2) The amount of the security deposit, which is subject to the discretion of the department, must be in an amount from $25,000 to $250,000. The security deposit must be posted in the form of:

(a) a certificate of deposit;

(b) a United States treasury note; or

(c) an irrevocable letter of credit.

(3) If a plan No. 2 insurer fails to discharge any determined liability within the time set by the department, the department may convert the security deposit to cash and use the proceeds to pay the liability. Upon the conversion, the plan No. 2 insurer shall immediately furnish additional security to the department in an amount determined by the department to provide reasonable assurance that all current and future liabilities incurred by the plan No. 2 insurer as a result of the coverage provided under this chapter can be fully paid.

(4) (a) The security deposit required by this section is the property of the department and is held in trust by the department for the payment of the liabilities of the plan No. 2 insurer incurred under this chapter.

(b) Any earnings made by the security deposit accrue to the ~~security deposit~~ *insurer*.

(c) Upon proof of final payment of all liabilities incurred under this chapter, the unexpended portion of the security deposit must be discharged and any proceeds remaining are payable to the plan No. 2 insurer.

(5) In the event of the insolvency of a plan No. 2 insurer, the department may, in its discretion, release part or all of the security deposit to the Montana insurance guaranty association, provided for in 33-10-103, for payment of the plan No. 2 insurer's Montana workers' compensation claims if:

(a) the plan No. 2 insurer has been determined to be insolvent by a court of competent jurisdiction or is the debtor in a bankruptcy proceeding;

(b) the plan No. 2 insurer is unable to pay its workers' compensation claims; and

(c) the plan No. 2 insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association.

(6) The department is authorized to share information and coordinate its actions with the Montana insurance commissioner and other appropriate regulatory agencies with respect to actions taken pursuant to this section.

(7) A captive reciprocal insurer specified in 39-71-2201 is not subject to this section."

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved April 8, 2011

CHAPTER NO. 151

[HB 116]

AN ACT PROVIDING FOR ACTUARIAL FUNDING OF THE TEACHERS' RETIREMENT SYSTEM; ESTABLISHING EMPLOYER LIABILITY REGARDING REPORTS RELATING TO RETIRED MEMBERS; CHANGING THE ACTUARIAL INTEREST RATE ON SERVICE PURCHASE AGREEMENTS; AMENDING PROVISIONS GOVERNING WORKING RETIREES; REVISING CAPS ON COMPENSATION THAT CAN BE USED IN THE CALCULATION OF AVERAGE FINAL COMPENSATION; PROVIDING FOR A FULL ACTUARIAL REDUCTION FOR EARLY RETIREMENT; AMENDING SECTIONS 19-20-208, 19-20-402, 19-20-403, 19-20-404, 19-20-408, 19-20-410, 19-20-416, 19-20-427, 19-20-715, 19-20-731, AND 19-20-802, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-20-208, MCA, is amended to read:

"19-20-208. Duties *and liability* of employer. *(1)* Each employer shall:

~~(1)~~*(a)* pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

~~(2)~~*(b)* transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

~~(3)~~*(c)* keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

~~(4)~~*(d)* upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

~~(5)~~*(e)* each month, report the name, social security number, and gross earnings of each retired member of the system who has been employed in a part-time teaching, administrative, or faculty position under the reemployment provisions of 19-20-731;

~~(6)~~*(f)* whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

~~(7)~~*(g)* at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

~~(8)~~*(h)* notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board; *and*

~~(9)~~*(i)* if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.

(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest."

Section 2. Section 19-20-402, MCA, is amended to read:

"19-20-402. Creditable service for employment in out-of-state public and federal schools. (1) (a) A member who has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after the salary was reported to the system for the fiscal year beginning July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid*:*

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service*; or*

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 3. Section 19-20-403, MCA, is amended to read:

"19-20-403. Creditable service for employment while on leave. (1) (a) A member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave.

(b) To be eligible to purchase service under this section, a member must have at least 5 years of membership service in the retirement system, must have been a member prior to the leave, and must have completed 1 year of active membership in Montana subsequent to the member's return.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contributions for the member's first full year's teaching salary earned in Montana after the member's return from leave, plus interest.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid*:*

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service*; or*

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 4. Section 19-20-404, MCA, is amended to read:

"19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To receive credit for this service, a member shall submit to the board a written application and proper certification of the member's military service.

(2) *(a)* If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection *(2)(a)* for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service~~,~~ if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest *paid as follows:*

(i) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana*; or*

(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(b) The contribution rate is that rate in effect at the time the person is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 5. Section 19-20-408, MCA, is amended to read:

"19-20-408. Creditable service for employment in private schools. (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid*:*

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service*; or*

(b) if a written application to purchase service is signed after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section."

Section 6. Section 19-20-410, MCA, is amended to read:

"19-20-410. Creditable service for extension service employment. (1) (a) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's teaching salary earned after becoming a member of the retirement system, plus interest *paid as follows:*

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contribution would have earned had the contribution been in the member's account upon the completion of 5 years of membership service*; or*

(ii) if a written application to purchase service is signed after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

Section 7. Section 19-20-416, MCA, is amended to read:

"19-20-416. Credit for legislative service required. (1) A legislator who did not elect to continue to participate in the system, as provided under 5-2-304, and who subsequently participates as a member must be awarded creditable service for legislative service if the legislator contributes~~:~~

~~(a)~~ an amount equal to the member contributions that would have been made if the legislator had elected membership~~; and~~

~~(b)~~ *plus* interest *paid as follows:*

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned if they had been on deposit with the retirement system*; or*

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The employer contribution must be made by the legislative branch in the amount that would have been contributed if the legislator had elected membership plus interest at the rate that the contributions would have earned if they had been on deposit with the retirement system."

Section 8. Section 19-20-427, MCA, is amended to read:

"19-20-427. Redeposit of contributions previously withdrawn. *(1)* In addition to the normal contributions required under 19-20-602, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of contribution, an

amount equal to the accumulated contributions that the member has previously withdrawn, plus interest ~~in the amount that~~ *paid as follows:*

(a) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions would have earned had the contributions not been withdrawn*; or*

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The redeposit must be made in accordance with 19-20-415."

Section 9. Section 19-20-715, MCA, is amended to read:

"19-20-715. Compensation limit. (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except ~~as provided by rule by the retirement board~~ *increases that result from movement on the employer's adopted salary matrix.*

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716*(1)(b)*."

Section 10. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits — *reporting obligations of retired member.* (1) (a) Except as [provided in 19-20-732 or as] otherwise provided in this section, a retired member may be employed ~~part-time~~ by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in [19-20-732 and] 19-20-733, the retirement benefit of a retired member~~:~~

~~(a)~~ employed ~~in a part-time position or~~ *and* earning more than allowed by subsections (1) and (2) must be temporarily reduced by $1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

~~(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.~~

(4) For purposes of this section, "position ~~eligible to participate in~~ *that is reportable to* the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

(5) For the purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

~~(5)~~*(6)* The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program. (Bracketed language terminates June 30, 2015—sec. 5, Ch. 129, L. 2009.)"

Section 11. Section 19-20-802, MCA, is amended to read:

"19-20-802. Early retirement. (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if the member files with the retirement board the member's written application.

(2) The early retirement allowance must be determined as prescribed in 19-20-804 ~~and section 5, Chapter 549, Laws of 1981~~, with the exception that the allowance will be reduced ~~as follows:~~

~~(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service; and~~

~~(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service~~ *using actuarially equivalent factors based on the most recent valuation of the system*."

Section 12. Effective date. [This act] is effective July 1, 2011.

Approved April 8, 2011

CHAPTER NO. 152

[HB 123]

AN ACT REVISING CERTAIN DEADLINES RELATIVE TO SCHOOL AND LOCAL GOVERNMENT FINANCING LAWS; AMENDING SECTIONS 7-6-4036, 15-10-305, 20-3-205, 20-3-209, 20-7-705, 20-9-115, 20-9-121, 20-9-131, 20-9-134, 20-9-141, 20-9-142, 20-9-151, 20-9-152, 20-9-213, 20-9-439, 20-9-501, 20-9-503, 20-9-506, 20-9-533, 20-9-534, 20-9-604, 20-10-144, 20-10-146, 20-10-147, AND 20-15-313, MCA; REPEALING SECTION 20-9-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4036, MCA, is amended to read:

"7-6-4036. Fixing tax levy. (1) The governing body shall fix the tax levy for each taxing jurisdiction within the county or municipality:

(a) by the later of the ~~second~~ *first* ~~Monday~~ *Thursday* in ~~August~~ *September* or within ~~45~~ *30* calendar days after receiving certified taxable values;

(b) after the approval and adoption of the final budget; and

(c) at levels that will balance the budgets as provided in 7-6-4034.

(2) Each levy:

(a) must be made in the manner provided by 15-10-201; and

(b) except for a judgment levy under 2-9-316 or 7-6-4015, is subject to 15-10-420."

Section 2. Section 15-10-305, MCA, is amended to read:

"15-10-305. Clerk and recorder to report mill levy — department to compute and enter taxes. (1) (a) The county clerk and recorder shall by the ~~third~~ *second* Monday in ~~August~~ *September or within 30 calendar days after receiving certified taxable values* notify the department of the number of mills needed to be levied for each taxing jurisdiction in the county. Except as provided in subsection (1)(b), the department shall compute the taxes by multiplying the number of mills times the taxable value of the property to be taxed and shall add any fees or assessments required to be levied against a person owning property. All taxes, fees, and assessments must be itemized for the property listed in the property tax record.

(b) In conveyances that result in a land split, the taxes must be based on the property as assessed on January 1 preceding the conveyance. The department is not required to include the name of the new owner in the computation of the amount of taxes, fees, and assessments to be levied against property that is part of a land conveyance if including the new owner's name would cause the department to violate the deadline provided in subsection (2).

(2) The department shall complete the computation of the amount of taxes, fees, and assessments to be levied against the property and shall notify the county clerk and recorder and the county treasurer by the second Monday in October. *Notwithstanding the provisions of 15-10-321, if a county clerk and recorder fails to timely notify the department of the number of mills needed to be levied for each taxing jurisdiction in that county in accordance with subsection (1)(a), the department must have additional time to meet the notification requirement of this subsection (2) equal to the number of days that the notification required in subsection (1)(a) was received late by the department.*"

Section 3. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. (1) The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(d) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(e) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(f) keep a transcript of the district boundaries of the county;

(g) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(h) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(i) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(j) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(k) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title ~~regulating school budgeting systems~~;

~~(l) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;~~

~~(m)~~*(l)* monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

~~(n)~~*(m)* act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(1)(c);

~~(o)~~*(n)* calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

~~(p)~~*(o)* compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report

the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

~~(q)~~*(p)* file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

~~(r)~~*(q)* for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

~~(s)~~*(r)* notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

~~(t)~~*(s)* act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

~~(u)~~*(t)* perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

~~(v)~~*(u)* administer the oath of office to trustees without the receipt of pay for administering the oath;

~~(w)~~*(v)* keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

~~(x)~~*(w)* within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(i) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(ii) the total receipts that were realized in each fund maintained by the district;

(iii) the total expenditures that were made from each fund maintained by the district; and

(iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

~~(y)~~*(x)* hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

(2) (a) When a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section.

(b) When two or more districts in more than one county consolidate, the duties required by this section must be performed by the county superintendent designated in the same manner as other county officials in 20-9-202."

Section 4. Section 20-3-209, MCA, is amended to read:

"20-3-209. Annual report. The county superintendent of each county shall submit an annual report to the superintendent of public instruction ~~not later than the second Monday in~~ *on or before* September *15*. The report must be completed on the forms supplied by the superintendent of public instruction and must include:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(2) the revenue amounts used to establish the levy requirements for the county school fund supporting school district transportation schedules, as prescribed by 20-10-146, and for the county school funds supporting elementary and high school district retirement obligations, as prescribed by 20-9-501;

(3) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(6); and

(4) any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title."

Section 5. Section 20-7-705, MCA, is amended to read:

"20-7-705. Adult education fund. (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax on the taxable value of all taxable property within the district for the operation of an adult education program.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the final budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners ~~on the fourth Monday of August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* and a levy on the district must be made by the county commissioners in accordance with 20-9-142."

Section 6. Section 20-9-115, MCA, is amended to read:

"20-9-115. Notice of final budget meeting. Between July 1 and August ~~4~~ *10* of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating the date, time, and place that the trustees will meet for the purpose of considering and adopting the final budget of the district, stating that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and stating that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget."

Section 7. Section 20-9-121, MCA, is amended to read:

"20-9-121. County treasurer's statement of cash balances and bond information. (1) By July ~~10~~ *20*, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district at the close of the last-completed school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information must be prescribed by the superintendent of public instruction.

(2) By July ~~10~~ *20*, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement must be prescribed by the superintendent of public instruction.

(3) ~~On or before~~ *By* July ~~10~~ *20*, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent, who shall forward the information to each district."

Section 8. Section 20-9-131, MCA, is amended to read:

"20-9-131. Final budget meeting. (1) On or before August ~~15~~ *20*, on the date and at the time and place stated in the notice published pursuant to 20-9-115, the trustees of each district shall meet to consider all budget information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than ~~the fourth Monday in~~ August *25* and before the *computation of the general fund net levy requirement by the county superintendent and the* fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget.

(3) Upon final approval, the trustees shall deliver the adopted budget, including the amounts to be raised by tax levies, to the county superintendent of schools within ~~5~~ *3* days."

Section 9. Section 20-9-134, MCA, is amended to read:

"20-9-134. Completion, filing, and delivery of final budgets. After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before ~~the second Monday in~~ September *15*; and

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1."

Section 10. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703; and

(v) school district block grants distributed under 20-9-630.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of any amount remaining after the determination in subsection (1)(c) and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners ~~on the fourth Monday of August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* by the county superintendent as the

general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 11. Section 20-9-142, MCA, is amended to read:

"20-9-142. Fixing and levying taxes by board of county commissioners. ~~On the fourth Monday in August~~ *By the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values*, the county superintendent shall place before the board of county commissioners the final adopted budget of the district. It is the duty of the board of county commissioners*, as provided in 7-6-4036,* to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget."

Section 12. Section 20-9-151, MCA, is amended to read:

"20-9-151. Budgeting procedure for joint districts. (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of the budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district, the final budgets of joint districts must be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenue and determine the number of mills that need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenue and determination of the tax levies.

(3) After determining, in accordance with law, the number of mills that need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies must be prepared and signed by the county superintendents involved in the computation. A copy of the statement must be delivered to the board of county commissioners of each county in which a part of the joint district is located ~~not later than the Friday immediately preceding the fourth Monday in August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values*."

Section 13. Section 20-9-152, MCA, is amended to read:

"20-9-152. Fixing and levying taxes for joint districts. (1) At the time of fixing levies for county and school purposes ~~on the fourth Monday in August~~ *by the later of the first Thursday in September or within 30 calendar days after receiving certified taxable values*, the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in each board's county at the number of mills for each levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent."

Section 14. Section 20-9-213, MCA, is amended to read:

"20-9-213. Duties of trustees. The trustees of each district have the authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund and account maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants or checks, as applicable, to be issued for the payment of lawful obligations;

(3) issue warrants or checks, as applicable, on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, either by directing the county treasurer to invest any money of the district or by directly investing the money of the district in eligible securities, as identified in 7-6-202, in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, or in a repurchase agreement that meets the criteria provided for in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet the requirements of this subsection (4), including those investments authorized by the board of investments under Title 17, chapter 6. A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements authorized under Title 7, chapter 11, and educational cooperative agreements authorized under Title 20, chapter 9, part 7. A school district either shall contract for investment services with any company complying with the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last-completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted ~~not later than September 1~~ *on or before August 15* to

the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district."

Section 15. Section 20-9-439, MCA, is amended to read:

"20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate. Subject to 20-6-326, the following provisions apply:

(1) The county superintendent shall compute the levy requirement for each school district's general obligation debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371;

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are authorized by 20-9-437(2) to be used to repay the district's bonds; and

(v) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners ~~on the fourth Monday of August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court

that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county."

Section 16. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; *and*

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514~~; and~~.

~~(v) for the 2011 biennium only, a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are budgeted in the district general fund but are paid from state fiscal~~

~~stabilization funds received pursuant the American Recovery and Reinvestment Act of 2009, Public Law 111-5.~~

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners ~~on the fourth Monday of August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint

district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction ~~not later than~~ *on or before* ~~the second Monday in~~ September *15*. The report must be completed on forms supplied by the superintendent of public instruction."

Section 17. Section 20-9-503, MCA, is amended to read:

"20-9-503. Budgeting, tax levy, and use of building reserve fund. (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include the authorized amount in the building reserve fund of the final budget. The county superintendent shall report the amount as the building reserve fund levy requirement to the county commissioners ~~on the fourth Monday of August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values*, and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund may:

(a) pledge the revenue for loans from the building reserve fund levy for up to 5 years. However, loan proceeds may be used only for projects authorized by 20-9-502.

(b) expend money from the fund for the purpose or purposes for which it was authorized without the specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to begin the authorized projects. The expenditures may not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest the money in accordance with 20-9-213(4). The interest earned from the investment must be credited to

the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for the fund."

Section 18. Section 20-9-506, MCA, is amended to read:

"20-9-506. Budgeting and net levy requirement for nonoperating fund. (1) The trustees of any district ~~which~~ *that* does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a nonoperating school district budget in accordance with the school budgeting provisions of this title. ~~Such~~ *The* nonoperating budget ~~shall~~ *must* contain the nonoperating fund and, when appropriate, a debt service fund. The nonoperating budget form ~~shall~~ *must* be promulgated and distributed by the superintendent of public instruction under the provisions of 20-9-103.

(2) After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for ~~such~~ *the* fund by subtracting from the amount authorized by ~~such~~ *the* budget the sum of:

(a) the end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of 20-9-505;

(b) the estimated state and county transportation reimbursements; and

(c) any other ~~moneys~~ *money* that may become available during the ensuing school fiscal year.

(3) The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of 20-9-439 to the county commissioners ~~on the fourth Monday of August~~ *on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values*, and ~~such levies shall be made on the district by~~ the county commissioners *shall impose the required levies on the district* in accordance with 20-9-142."

Section 19. Section 20-9-533, MCA, is amended to read:

"20-9-533. Technology acquisition and depreciation fund — limitations. (1) The trustees of a district may establish a technology acquisition and depreciation fund for school district expenditures incurred and depreciation accrued for:

(a) the purchase, rental, repair, maintenance, and depreciation of technological equipment, including computers and computer network access; and

(b) associated technical training for school district personnel.

(2) Any expenditures from the technology acquisition and depreciation fund must be made in accordance with the financial administration requirements for a budgeted fund pursuant to this title. The trustees of a district shall fund the technology acquisition and depreciation fund with:

(a) the state money received under 20-9-534; and

(b) other local, state, private, and federal funds received for the purpose of funding technology or technology-associated training.

(3) In depreciating the technological equipment of a school district, the trustees may include in the district's budget, contingent upon voter approval of a levy under subsection (6) and pursuant to the school budgeting requirements of this title, an amount each fiscal year that does not exceed 20% of the original cost of any technological equipment, including computers and computer network access, that is owned by the district. The amount budgeted may not, over time, exceed 150% of the original cost of the equipment.

(4) The annual revenue requirement for each district's technology acquisition and depreciation fund determined within the limitations of this section must be reported by the county superintendent of schools to the board of county commissioners on ~~the fourth Monday of August~~ *or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* as the technology acquisition and depreciation fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(5) Any expenditure of technology acquisition and depreciation fund money must be within the limitations of the district's final technology acquisition and depreciation fund budget and the school financial administration provisions of this title.

(6) In addition to the funds received pursuant to subsection (2), the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional levy to fund the depreciation of technological equipment authorized under this section. The election must be called and conducted in the manner prescribed by this title for school elections and in the manner prescribed by 15-10-425.

(7) The technology proposition is approved if a majority of those electors voting at the election approve the levy. Notwithstanding any other provision of law, the levy under subsection (6) is subject to 15-10-420.

(8) The trustees of a district may not use revenue in the technology acquisition and depreciation fund to finance contributions to the teachers' retirement system, the public employees' retirement system, or the federal social security system or for unemployment compensation insurance."

Section 20. Section 20-9-534, MCA, is amended to read:

"20-9-534. Statutory appropriation for school technology purposes. (1) The amount of $1 million a year is statutorily appropriated, as provided in 17-7-502, from the school facility and technology account established in 20-9-516 for grants for school technology purposes.

(2) By ~~September 1~~ *the third Friday in July*, the superintendent of public instruction shall allocate the annual statutory appropriation for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533 in the prior fiscal year."

Section 21. Section 20-9-604, MCA, is amended to read:

"20-9-604. Gifts, legacies, devises, and administration of endowment fund. (1) The trustees of a district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit the gift, legacy, devise, or the proceeds in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund may be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of the money, the money deposited in the endowment fund must be invested by the trustees according to the provisions of the Uniform Management of Institutional Funds Act, Title 72, chapter 30.

(3) All interest collected on the deposits or investments must be credited to the endowment fund. No portion of the endowment fund may be loaned to the district, nor may any money of the fund be invested in warrants of the district.

(4) Whenever a district has been abandoned, the endowment fund of the abandoned district must be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer is liable on the treasurer's official bond for the endowment fund of any district of the county. ~~No later than~~ *By* July ~~1~~ *20* ~~each school fiscal year~~, the county treasurer shall report to the trustees of each district on the condition of its endowment fund, including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in the treasurer's reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district that become a part of the endowment fund."

Section 22. Section 20-10-144, MCA, is amended to read:

"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated local government severance tax payments for calendar year 1995 production;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) school district block grants distributed under 20-9-630;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners ~~on the fourth Monday of August~~ *on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 23. Section 20-10-146, MCA, is amended to read:

"20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) countywide school transportation block grants distributed under 20-9-632;

(vi) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vii) federal forest reserve funds allocated under the provisions of 17-3-213; and

(viii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners ~~on the fourth Monday of August~~ *on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction ~~not later than the second Monday in~~ *on or before* September *15*. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 24. Section 20-10-147, MCA, is amended to read:

"20-10-147. Bus depreciation reserve fund. (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio. The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners ~~on the fourth Monday of August~~ *by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values* as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses, to replace the buses or radios, or for the purchase of an additional bus as provided in subsection (1), for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and

the trustees shall immediately order the county treasurer to make the approved transfer."

Section 25. Section 20-15-313, MCA, is amended to read:

"20-15-313. Tax levy. ~~On the second Monday in August~~ *By the later of the first Thursday in September or within 30 calendar days after receiving certified taxable values*, the board of county commissioners of any county where a community college district is located shall, subject to 15-10-420, fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by 20-15-312(1)(b) and the voted levy prescribed by 20-15-311(5) if one has been approved by the voters. When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county."

Section 26. Repealer. The following section of the Montana Code Annotated is repealed:

20-9-211. Annual financial report of county superintendent.

Section 27. Effective date. [This act] is effective on passage and approval.

Approved April 10, 2011

CHAPTER NO. 153

[HB 131]

AN ACT ELIMINATING THE REQUIREMENT FOR THE STATE TO RECOVER FROM A CITY OR COUNTY A PERCENTAGE OF CERTAIN COSTS RELATED TO INCIDENTS INVOLVING HAZARDOUS MATERIAL OR ORPHANED HAZARDOUS MATERIAL; AND AMENDING SECTIONS 10-3-1203 AND 10-3-1216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-1203, MCA, is amended to read:

"10-3-1203. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means the division of disaster and emergency services in the department of military affairs.

(3) "Duration of response" means a period of time beginning when an emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

(5) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to

control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

(6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(8) "Incident commander" means the person who is designated in the local emergency operations plan.

(9) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

(10) "Local emergency response authority" means the agency designated by the city, county, or commission to be responsible for the management of an incident at the local level.

~~(11) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.~~

~~(12)~~*(11)* "Plan" means the Montana incident management and hazardous material response support plan.

~~(13)~~*(12)* (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

~~(14)~~*(13)* "State hazardous material incident response team" means persons who are designated as state employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may include members of the commission and local and state government responders.

~~(15)~~*(14)* "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment."

Section 2. Section 10-3-1216, MCA, is amended to read:

"10-3-1216. Cost recovery and civil remedies. (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in this part is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission, the state hazardous material incident response team, and the local emergency response authority, this part does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

~~(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to this part.~~

~~(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions.~~"

Approved April 8, 2011

CHAPTER NO. 154

[HB 134]

AN ACT IMPROVING THE ACTUARIAL UNFUNDED LIABILITY OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM BY INCREASING THE TIME PERIOD USED IN CALCULATING HIGHEST AVERAGE COMPENSATION FOR NEW HIRES; AMENDING SECTION 19-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer in payment for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) *(a)* "Highest average compensation" means ~~a member's~~*:*

(i) for members hired prior to [the effective date of this act], the highest average monthly compensation during any 36 consecutive months of membership service*;*

(ii) for members hired on or after [the effective date of this act], the highest average monthly compensation during any 60 consecutive months of membership service; or~~,~~

(iii) in the event a member has not served ~~at least 36 months,~~ *the minimum specified period of membership service,* the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation designated or appointed as a peace officer pursuant to 61-10-154 or 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 8, 2011

CHAPTER NO. 155

[HB 135]

AN ACT INCREASING THE TIME PERIOD FOR CALCULATING HIGHEST AVERAGE COMPENSATION FOR INDIVIDUALS WHO INITIALLY BECOME MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM AFTER JUNE 30, 2011; AMENDING SECTION 19-7-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Detention officer" means any detention officer who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment

standards set for detention officers by the Montana public safety officer standards and training council established in 2-15-2029.

(3) *(a)* "Highest average compensation" means*:* ~~a~~

(i) for members hired prior to [the effective date of this act], the member's highest average monthly compensation during any 36 consecutive months of membership service*;*

(ii) for members hired on or after [the effective date of this act], the highest average compensation during any 60 consecutive months of membership service; or~~,~~

(iii) if a member has not served ~~at least 36 months~~ *the minimum specified period of membership service as applicable in subsection (3)(a)(i) or (3)(a)(ii)*, the total compensation earned divided by the number of months of service.

(b) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(4) "Investigator" means a person who is employed by the department of justice as a criminal investigator or as a gambling investigator.

(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 8, 2011

CHAPTER NO. 156

[HB 185]

AN ACT LISTING SYNTHETIC MARIJUANA AND SALVIA AS DANGEROUS DRUGS; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING PENALTIES; AMENDING SECTIONS 44-12-102, 45-9-101, 45-9-102, 45-9-110, 50-31-306, 50-31-310, AND 50-32-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9, all proceeds traceable to an exchange, and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

(h) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and

(i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with the owner's actual knowledge or express consent.

(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) A conveyance or container is not subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana*, but this exception does not apply to synthetic cannabinoids listed as dangerous drugs in 50-32-222*."

Section 2. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal distribution of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) *(a)* A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) The exception for marijuana or tetrahydrocannabinol in subsection (3)(a) does not apply to synthetic cannabinoids listed as dangerous drugs in 50-32-222.

(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 3. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail for a term not

to exceed 1 year or in the state prison for a term not to exceed 3 years or by both. *This subsection does not apply to the possession of synthetic cannabinoids listed as dangerous drugs in 50-32-222.*

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(5) (a) A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:

(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed $50,000, or both; or

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed $50,000.

(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.

(c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

(i) the person to abide by the standard conditions of probation established by the department of corrections;

(ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;

(iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(iv) that the person may not consume alcoholic beverages;

(v) the person to enter and remain in an aftercare program as directed by the person's probation officer; and

(vi) the person to submit to random or routine drug and alcohol testing.

(6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(7) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(8) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 4. Section 45-9-110, MCA, is amended to read:

"45-9-110. Criminal production or manufacture of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. *The penalties provided for in this subsection also apply to the criminal production or manufacture of synthetic cannabinoids listed as dangerous drugs in 50-32-222.*

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than $50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than $100,000.

(5) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 5. Section 50-31-306, MCA, is amended to read:

"50-31-306. When drug or device misbranded. (1) A drug or device is considered to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation may be permitted and exemptions as to small packages may be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, *Salvia divinorum,* sulfonmethane, *synthetic cannabinoids,* or any chemical derivative of the substance that, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act (21 U.S.C. 352(d)), unless its label bears the name and quantity or proportion of the substance or derivative in juxtaposition to the statement "Warning—May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301) of the drug, if there is one; and

(ii) in case the drug is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained in the drug. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), applies only to prescription drugs, and to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions may be allowed under regulations promulgated by the department or under the federal act.

(f) unless its labeling bears:

(i) adequate directions for use; however, if any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting the drug or device from the requirements, and articles exempted under regulations issued under section 502(f) of the federal act (21 U.S.C. 352(f)) may also be exempt; and

(ii) adequate warnings against use in those pathological conditions or by children when its use may be dangerous to health or adequate warnings against unsafe dosage or methods or duration of administration or application, in a manner and form that are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed in the

compendium. The method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection (1)(g) and those of subsection (1)(e) as to the name by which the drug or its ingredients must be designated, the requirements of subsection (1)(e) prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in a form and manner and its label bears a statement of precautions that the regulations issued by the department or under the federal act require as necessary for the protection of public health. A regulation may not be established for any drug recognized in an official compendium until the department has informed the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and the body has failed within a reasonable time to prescribe the requirements.

(i) if it is a drug and its container is made, formed, or filled in a way that is misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act (21 U.S.C. 356); and

(ii) the certificate or release is in effect with respect to the drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act (21 U.S.C. 357); and

(ii) the certificate or release is in effect with respect to the drug. This subsection (1)(n) does not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act (21 U.S.C. 357(c) or (d)).

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor of the drug includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301;

(ii) the formula showing quantitatively each ingredient of the drug to the extent required for labels under section 502(e) of the federal act (21 U.S.C. 352(e)); and

(iii) other information in brief summary relating to side effects, contraindications, and effectiveness that is required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed on the drug or upon its container with intent to defraud.

(2) A drug that is subject to 50-31-307 is considered to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply is considered to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence."

Section 6. Section 50-31-310, MCA, is amended to read:

"50-31-310. Narcotic and marijuana laws not affected. Nothing in 50-31-306(2), 50-31-307, 50-31-308, or 50-31-309 shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs ~~or~~*,* marijuana, *or synthetic cannabinoids,* as defined in the applicable federal and state laws relating to narcotic drugs ~~and~~*,* marijuana*, and synthetic cannabinoids*."

Section 7. Section 50-32-222, MCA, is amended to read:

"50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl;

(b) acetylmethadol;

(c) allylprodine;

(d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(e) alphameprodine;

(f) alphamethadol;

(g) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide and;

(i) benzethidine;

(j) betacetylmethadol;

(k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;

(l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(m) betameprodine;

(n) betamethadol;

(o) betaprodine;

(p) clonitazene;

(q) dextromoramide;

(r) diampromide;

(s) diethylthiambutene;

(t) difenoxin;

(u) dimenoxadol;

(v) dimepheptanol;

(w) dimethylthiambutene;

(x) dioxaphetyl butyrate;

(y) dipipanone;

(z) ethylmethylthiambutene;

(aa) etonitazene;

(bb) etoxeridine;

(cc) furethidine;

(dd) hydroxypethidine;

(ee) ketobemidone;

(ff) levomoramide;

(gg) levophenacylmorphan;

(hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;

(ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(jj) morpheridine;

(kk) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(ll) noracymethadol;

(mm) norlevorphanol;

(nn) normethadone;

(oo) norpipanone;

(pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;

(qq) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(rr) phenadoxone;

(ss) phenampromide;

(tt) phenomorphan;

(uu) phenoperidine;

(vv) piritramide;

(ww) proheptazine;

(xx) properidine;

(yy) propiram;

(zz) racemoramide;

(aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;

(bbb) tilidine; and

(ccc) trimeperidine.

(2) For the purposes of subsection (1)(hh), the term "isomer" includes the optical, position, and geometric isomers.

(3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following are opium derivatives, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine;

(b) acetyldihydrocodeine;

(c) benzylmorphine;

(d) codeine methylbromide;

(e) codeine-n-oxide;

(f) cyprenorphine;

(g) desomorphine;

(h) dihydromorphine;

(i) drotebanol;

(j) etorphine, except hydrochloride salt;

(k) heroin;

(l) hydromorphinol;

(m) methyldesorphine;

(n) methyldihydromorphine;

(o) morphine methylbromide;

(p) morphine methylsulfonate;

(q) morphine-n-oxide;

(r) myrophine;

(s) nicocodeine;

(t) nicomorphine;

(u) normorphine;

(v) pholcodine; and

(w) thebacon.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alpha-ethyltryptamine. Trade or other names include etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.

(b) 4-bromo-2,5-dimethoxy-amphetamine. Trade or other names include 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine and 4-bromo-2,5-DMA.

(c) 4-bromo-2,5-dimethoxyphenethylamine. Trade or other names include 2-(4-bromo-2, 5-dimethoxyphenyl)-1-aminoethane, alpha-desmethylDOB, and 2C-B,Nexus.

(d) 2,5-dimethoxyamphetamine. Trade or other names include 2,5-dimethoxy-alpha-methylphenothylamine and 2,5-DMA.

(e) 3,4-methylenedioxy amphetamine;

(f) 2,5-dimethoxy-4-ethylamphetamine. A trade or other name is DOET.

(g) 4-methoxyamphetamine. A trade or other name is 4-methoxy-alpha-methylphenethylamine.

(h) 5-methoxy-3,4-methylenedioxy amphetamine;

(i) 4-methyl-2,5-dimethoxy-amphetamine. Trade or other names include 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine, DOM, and STP.

(j) 3,4-methylenedioxy amphetamine;

(k) 3,4-methylenedioxymethamphetamine (MDMA);

(l) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;

(m) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine and N-hydroxy MDA;

(n) 3,4,5-trimethoxy amphetamine;

(o) bufotenine. Trade and other names include 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)- 5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine.

(p) diethyltryptamine. Trade and other names include N,N-diethyltryptamine and DET.

(q) dimethyltryptamine. A trade or other name is DMT.

(r) ibogaine. Trade or other names include 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga.

(s) lysergic acid diethylamide;

(t) marijuana;

(u) mescaline;

(v) parahexyl. Trade or other names include 3-hexyl-1-hydroxy-7, 8,9,10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl.

(w) peyote, meaning all parts of the plant presently classified botanically as lophophora williamsii lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salts, derivatives, mixture, or preparation of the plant, its seed, or extracts;

(x) n-ethyl-3-piperidyl benzilate;

(y) n-methyl-3-piperidyl benzilate;

(z) psilocybin;

(aa) psilocyn;

(bb) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections (4)(bb)(i) through (4)(bb)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:

(i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;

(ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and

(iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;

(cc) ethylamine analog of phencyclidine. Trade or others names include N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE.

(dd) pyrrolidine analog of phencyclidine. Trade or other names include 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP.

(ee) thiophene analog of phencyclidine. Trade or other names include 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, and TCP.

(ff) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. A trade or other name is TCPy.

(gg) synthetic cannabinoids:

(i) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);

(ii) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-210 or 1, 1-dimethylheptyl-11-hydroxy-delta8- tetrahydrocannabinol);

(iii) 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol (also known as CP-47,497), and the dimethylhexyl, dimethyloctyl, and dimethylnonyl homologues of CP-47,497;

(iv) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073);

(v) 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole (also known as JWH-200);

(vi) 1-pentyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250);

(vii) 1-hexyl-3-(1-naphthoyl)indole (also known as JWH-019);

(viii) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (also known as JWH-398);

(ix) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl- (1-pentylindol-3-yl)methanone;

(x) the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives:

(A) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone (also known as WIN-55,212-2);

(B) 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (also known as HU-243); or

(C) [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate;

(xi) any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(xii) any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(xiii) any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(xiv) any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent; or

(xv) any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent;

(hh) Salvia divinorum: Salvinorin A (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(3-furanyl)dodechydro-6a,10b-dimethyl-4, 10-dioxo-2H-naphtho [2,1-c] pyran-7-carboxylic acid methyl ester.

(5) *(a)* For the purposes of subsection (4), the term "isomer" includes the optical, position, and geometric isomers.

(b) Subsection (4)(gg) does not apply to synthetic cannabinoids approved by the U.S. food and drug administration and obtained by a lawful prescription through a licensed pharmacy. The department of public health and human services shall adopt a rule listing the approved cannabinoids and shall update the rule as necessary to keep the list current.

(6) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) mecloqualone; and

(b) methaqualone.

(7) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) aminorex. Trade or other names include aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine.

(b) cathinone. Trade or other names include 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

(c) fenethylline;

(d) methcathinone. Trade or other names include 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers.

(e) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(f) N-ethylamphetamine;

(g) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethamine and N,N-alpha-trimethylphenethylamine.

(8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and

(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers).

(9) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must automatically be rescheduled from Schedule I to Schedule II."

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2011

CHAPTER NO. 157

[HB 225]

AN ACT PROVIDING A QUALIFIED EXEMPTION FROM THE ENVIRONMENTAL REVIEW COMPLIANCE LAWS FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS WHEN THE DEPARTMENT ACTS AS A SNOWMOBILE AREA OPERATOR OR WHEN THE DEPARTMENT PROVIDES FUNDING ASSISTANCE TO A SNOWMOBILE AREA OPERATOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Environmental review compliance — exemption. (1) Except as provided in subsection (2), the department of fish, wildlife, and parks shall comply with the provisions of Title 75, chapter 1, parts 1 and 2, when:

(a) acting as a snowmobile area operator pursuant to 23-2-652 through 23-2-655; or

(b) awarding a grant or other funding assistance to a snowmobile area operator.

(2) The department of fish, wildlife, and parks is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions as a snowmobile area operator pursuant to 23-2-652 through 23-2-655 or when awarding a grant or other funding assistance to a snowmobile area operator if the action or award has been previously subject to environmental review under Title 75, chapter 1, parts 1 and 2, and there is no proposed change to the action or the use of the award.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 2, part 6, and the provisions of Title 23, chapter 2, part 6, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2011

CHAPTER NO. 158

[HB 256]

AN ACT PROVIDING FOR RECOGNITION IN MONTANA LAW OF THE RIGHT OF A MEMBER OF THE ARMED FORCES TO CONTROL THE DISPOSITION OF THE MEMBER'S REMAINS BY EXECUTION OF A DEPARTMENT OF DEFENSE FORM 93; AMENDING SECTION 37-19-904, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-19-904, MCA, is amended to read:

"37-19-904. Priority of rights of disposition. (1) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of the person's remains may execute an affidavit or a written instrument before a notary public in substantially the following form:

"State of Montana] ss

County of .....]

I, ... [person designating another person to control the disposition of the person's remains] do hereby designate ..... [person who is provided with the right to control the disposition] with the right to control the disposition of my remains upon my death. I ..... have or ..... have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions. Subscribed and sworn to before me this ..... day of the month of ..... of the year .....

....."

(2) Except as provided in 37-19-903, 37-19-907, ~~and~~ *and* subsection (1) of this section, the right to control the disposition of the remains of a deceased person, including the location, manner, and conditions of the disposition and arrangements for funeral goods and services, vests in the following persons in the order named if the named person is 18 years of age or older and is of sound mind:

(a) for a decedent who was on active duty in the armed forces of the United States, a member of the Montana national guard, or a member of the federal reserves of the armed forces of the United States at the time of the decedent's death, any person named by the decedent as the person with the right to control the decedent's disposition in a department of defense form 93;

~~(a)~~*(b)* a person designated by the decedent as the person with the right to control the decedent's disposition in an affidavit or written instrument executed in accordance with subsection (1);

~~(b)~~*(c)* the surviving spouse;

~~(c)~~*(d)* the sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one-half of the surviving children may be vested with the rights and duties provided in this section if those surviving children have used reasonable efforts to notify all other surviving children of their instructions and they are not aware of opposition to their instructions on the part of more than one-half of all surviving children.

~~(d)~~*(e)* the surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent may be vested with the rights and

duties provided in this section if that parent's reasonable efforts have been unsuccessful in locating the absent surviving parent.

~~(e)~~*(f)* the surviving sibling of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than one-half of the surviving siblings may be vested with the rights and duties provided in this section if those siblings have used reasonable efforts to notify all other surviving siblings of their instructions and they are not aware of any opposition to their instructions on the part of more than one-half of all surviving siblings.

~~(f)~~*(g)* the surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than one-half of the surviving grandparents may be vested with the rights and duties provided in this section if those grandparents have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to their instructions on the part of more than one-half of all surviving grandparents.

~~(g)~~*(h)* the guardian of the decedent at the time of the decedent's death, if a guardian had been appointed;

~~(h)~~*(i)* the personal representative of the estate of the decedent;

~~(i)~~*(j)* the person in classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.

~~(j)~~*(k)* if the disposition of the remains of the decedent is the responsibility of the state or a local government, the public officer, administrator, or employee responsible for arranging the disposition of the decedent's remains; and

~~(k)~~*(l)* in the absence of any person provided for in subsections (2)(a) through ~~(2)(j)~~ *(2)(k)*, any other person, including the mortician with custody of the remains, who is willing to assume the responsibility to act and arrange the disposition of the decedent's remains after attesting in writing that a good faith effort has been made to contact the individuals provided for in subsections (2)(a) through ~~(2)(j)~~ *(2)(k)*."

Section 2. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to individuals who executed a department of defense form 93 before October 1, 2011.

Approved April 8, 2011

CHAPTER NO. 159

[HB 269]

AN ACT ESTABLISHING THE BLUE ALERT PROGRAM WITHIN THE DEPARTMENT OF JUSTICE TO ASSIST IN NOTIFICATION TO PERSONS CONCERNING AND CAPTURE OF PERSONS RESPONSIBLE FOR THE DEATH OR SERIOUS INJURY OF A PEACE OFFICER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Blue alert program. (1) There is a state alert system known as the blue alert program within the department of justice.

(2) Upon request by a law enforcement agency, the department may activate the blue alert program if the department determines that:

(a) a peace officer has been killed or seriously injured in the line of duty;

(b) an individual suspected to have caused the death or injury is at large;

(c) a law enforcement agency has determined that the individual referred to in subsection (2)(b) poses a serious threat to the public, other peace officers, or both; and

(d) sufficient information exists about the individual referred to in subsection (2)(b) or about the death or injury so that the activation of the program would materially assist in the capture of the individual.

(3) Upon activation of the blue alert program, the department shall notify the following entities in the state or area in which the alert is established:

(a) all law enforcement agencies;

(b) individuals who, because of their proximity to the geographic area in which the death or injury occurred, may have observed the death or injury or the escape of the individual referred to in subsection (2)(b) or may themselves become a victim of that individual;

(c) individuals who may have a special relationship to the individual referred to in subsection (2)(b), such as a relative of that individual or a peace officer or other person within the criminal justice system who knows the individual; and

(d) other persons who the department determines would benefit from the notice.

(4) The department shall terminate the blue alert when it determines that the individual referred to in subsection (2)(b) has been apprehended or when it determines that the blue alert will no longer materially assist in the capture of the individual.

(5) The department shall adopt rules to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Law enforcement agency" has the meaning provided in 44-11-303.

(b) "Peace officer" has the meaning provided in 46-1-202.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 2, and the provisions of Title 44, chapter 2, apply to [section 1].

Approved April 8, 2011

CHAPTER NO. 160

[HB 315]

AN ACT ESTABLISHING A SAFE WORKING PRESSURE FACTOR FOR HISTORICAL BOILERS; REVISING REQUIREMENTS FOR TRACTION ENGINEER LICENSES; AND AMENDING SECTIONS 50-74-218 AND 50-74-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-74-218, MCA, is amended to read:

"50-74-218. Safe working pressure. (1) If a boiler is constructed with lap horizontal seams on the boiler, dome, or drum, a factor of 4 1/2 ~~shall~~ *must* be used in determining the safe working pressure allowed on the boiler.

(2) If a boiler is constructed with butt strap horizontal seams, a factor of four may be used in determining the safe working pressure.

(3) If a boiler is a historical boiler, as defined by the department by rule, on stayed sections, a safety factor of four must be used in determining the safe working pressure.

~~(3)~~*(4)* If a boiler rests on a side wall on lugs, is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used in determining the safe working pressure.

~~(4)~~*(5)* If the horizontal lap seams of a boiler are exposed to the fire, a factor of five must be used in determining the safe working pressure.

~~(5)~~*(6)* On new stay bolts, 7,500 pounds pressure per square inch is allowed. If the stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on ~~them~~ *the stay bolts*.

~~(6)~~*(7)* On braces made of solid material, 8,000 pounds pressure per square inch is allowed. On welded braces or braces with only one crowfoot, 6,000 pounds pressure per square inch is allowed.

~~(7)~~*(8)* ~~No cast~~ *Cast* iron may *not* be used in the construction or reinforcements of a boiler if the pressure allowed on the boiler is more than 100 pounds per square inch."

Section 2. Section 50-74-307, MCA, is amended to read:

"50-74-307. Requirements for traction licenses. An applicant for a traction engineer's license:

(1) must be 18 years of age or older;

(2) *shall attend a steam school approved by the department by rule and may apply steam school hours to the hour requirement established in subsection (3);*

(3) must have at least ~~480~~ *50* hours total experience in the operation of steam traction engines; *and*

~~(3)~~*(4)* shall successfully pass a written examination prescribed by the department~~; and~~.

~~(4) must be found competent to operate a traction engine by the department.~~"

Approved April 8, 2011

CHAPTER NO. 161

[HB 391]

AN ACT PROVIDING THAT THE POWER OF INITIATIVE DOES NOT EXTEND TO THE PRIORITIZATION OF THE ENFORCEMENT OF ANY STATE LAW BY A UNIT OF LOCAL GOVERNMENT; AND AMENDING SECTION 7-5-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-131, MCA, is amended to read:

"7-5-131. Right of initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-137.

(2) The powers of initiative ~~shall~~ *do* not extend to the following:

(a) the annual budget;

(b) bond proceedings, except for ordinances authorizing bonds;

(c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; ~~or~~

(d) the levy of special assessments pledged for the payment of principal and interest on bonds*; or*

(e) the prioritization of the enforcement of any state law by a unit of local government."

Approved April 10, 2011

CHAPTER NO. 162

[HB 430]

AN ACT REVISING LAWS REGARDING THE ADMINISTRATION OF CONSERVATION DISTRICTS; REVISING PROVISIONS RELATED TO THE REORGANIZATION OF DISTRICT GOVERNING BODIES; CLARIFYING THE COMPOSITION OF DISTRICT GOVERNING BODIES WHEN A PORTION OF AN INCORPORATED MUNICIPALITY IS LOCATED WITHIN THE BOUNDARY OF A CONSERVATION DISTRICT; AMENDING SECTIONS 76-15-301, 76-15-311, AND 76-15-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-15-301, MCA, is amended to read:

"76-15-301. Establishment *of supervisor areas* and reorganization of ~~supervisor areas~~ *district governing bodies.* (1) (a) ~~The~~ *A* conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. ~~If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county.~~ If less than five supervisor areas are established, *a* sufficient *number of* supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) *(a)* In a district containing no incorporated municipalities *that are completely within the boundaries of the district*, the department ~~may~~ *shall, upon passage of a resolution by the district to transition to seven supervisors,* reorganize the district ~~into seven supervisor areas~~ *as provided in 76-15-305 and this subsection (2).*

(b) A district that is reorganized pursuant to this section may be divided into no more than seven supervisor areas.

(3) If provided by ordinance of the district, a supervisor must reside in the area the supervisor represents."

Section 2. Section 76-15-311, MCA, is amended to read:

"76-15-311. Governing body of district. (1) If there are no incorporated municipalities *that are completely* within the boundaries of the district, the governing body of the district shall consist of five elected supervisors unless the district has been reorganized pursuant to 76-15-301(2) and 76-15-305.

(2) If there are incorporated municipalities *that are completely* within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in ~~such~~ *those* districts. ~~The two appointed supervisors must be residents of municipalities within the district.~~ The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors ~~shall be~~ *is* 3 years.

(b) Where there are ~~more than~~ two *or more* incorporated municipalities *that are completely* within *the boundaries of* a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district. ~~and no~~ *A* municipality ~~shall~~ *may not* have more than one appointed supervisor residing ~~therein~~ *in the municipality. The legislative bodies of the incorporated municipalities within the district shall agree on the persons appointed to serve as the appointed supervisors.*

(3) If there are no incorporated municipalities that are completely within the boundaries of the district but a portion of one or more incorporated municipalities is within the boundaries of a district, the elected supervisors may pass a resolution to transition to a board of seven members consisting of five elected supervisors and two supervisors appointed by the legislative bodies of the partially included municipalities as provided in subsection (2).

(4) A supervisor appointed under subsection (2) or (3) may live outside the municipality the supervisor represents, but the supervisor must reside within the boundaries of the district.

(5) An elected supervisor must reside within the boundaries of the district.

~~(3)~~*(6)* The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter."

Section 3. Section 76-15-312, MCA, is amended to read:

"76-15-312. Term of office and vacancies. (1) The term of office of each supervisor is 4 years, except that the supervisors who are first appointed by the department must be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor holds office until a successor has been elected and has qualified.

(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

(a) death;

(b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;

(c) resignation;

(d) removal from office;

(e) unexcused absence from three consecutive regular meetings of the board of supervisors;

(f) ceasing to ~~be a resident of~~ *reside in* the district;

(g) conviction of a felony or a violation of official duties; or

(h) the decision of a court declaring void the incumbent's election or appointment.

(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.

(4) A vacancy occurring in the office of an elected supervisor must be filled by appointment by the remaining supervisors until the next regular election, when a successor must be elected to serve the unexpired term."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2011

CHAPTER NO. 163

[HB 487]

AN ACT PROVIDING FOR LIFE INSURANCE COVERAGE FOR NONSPECIFIED DISCRETIONARY GROUPS THAT MEET CERTAIN REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Discretionary groups. (1) Subject to the requirements of this section, the lives of a group of individuals may be insured under a policy issued to a group other than one described in this part if the commissioner finds that:

(a) the issuance of the policy is not contrary to the best interest of the public;

(b) the issuance of the policy would result in economies of acquisition or administration; and

(c) the benefits of the policy are reasonable in relation to the premiums charged.

(2) Group life insurance coverage under this section may be offered in this state by an insurer under a policy issued in another state only if this state or another state that has requirements substantially similar to the requirements in subsection (1) has made a determination that the requirements of subsection (1) have been met.

(3) The premium for a policy issued under this section must be paid either from the policyholder's funds, from funds contributed by the covered persons, or from both.

(4) An insurer may exclude or limit the coverage on any individual if the evidence of the individual's insurability is not satisfactory to the insurer.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 20, part 11, and the provisions of Title 33, chapter 20, part 11, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2011

CHAPTER NO. 164

[HB 498]

AN ACT AUTHORIZING AN IRRIGATION DISTRICT TO ISSUE BONDS OR ENTER INTO A CONTRACT WITH THE UNITED STATES IF APPROVED BY A MAJORITY VOTE OF THE VOTERS THAT ARE ELIGIBLE TO VOTE WITHIN THE IRRIGATION DISTRICT; AMENDING SECTIONS 85-7-2013, 85-7-2014, 85-7-2016, AND 85-7-2032, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-2013, MCA, is amended to read:

"85-7-2013. ~~Petition~~ *Majority vote and petition* requirements. (1) Bonds provided for in 85-7-2012 through 85-7-2015 may not be authorized or issued by or on behalf of any irrigation district organized under this chapter or by an irrigation district on behalf of a subdistrict located in the district and a contract may not be made with the United States as provided in 85-7-1906 except upon ~~a petition signed by~~:

(a) approval by a majority vote of those voting on the question at an election conducted as prescribed in 85-7-1710;

~~(a)~~*(b) receipt of a petition signed by* at least 60%, in number and acreage, of the holders of title or evidence of title to lands included within the district or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 60% in number and acreage of the holders of title or evidence of title to lands within the subdistrict; or

~~(b)~~*(c) receipt of a petition signed by* at least 75%, in number and acreage, of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the district are situated or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 75% in number and acreage of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the subdistrict are situated.

(2) The petition must be addressed to the board of commissioners, set forth the aggregate amount of bonds to be issued and the purpose or purposes of the bonds, have attached to it an affidavit verifying the signatures to the petition, and be filed with the secretary of the board. When bonds are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of the district, the bonds may be authorized and issued in the manner provided for by 85-7-2019.

(3) In an election held for approval to allow a district or subdistrict to issue bonds or enter into a contract under this section, the voting majority must own at least 50% of the acreage included in the district or subdistrict."

Section 2. Section 85-7-2014, MCA, is amended to read:

"85-7-2014. Procedure after *election or* petition filed. Upon *an election or* the filing of the petition *pursuant to 85-7-2013*, the board of commissioners shall, by appropriate order or resolution~~,~~*:*

(1) authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the *election or* petition;

(2) fix the numbers, denominations, and maturity or maturities of the bonds;

(3) specify the rate of interest on the bonds and whether *it is* payable annually or semiannually;

(4) designate the place and method of payment of the bonds and the interest on the bonds, within or outside the state of Montana;

(5) prescribe the form of the bonds; and

(6) provide for the levy of a special tax or assessment as provided in this chapter on all the lands in the district or for a levy on a subdistrict if the bonds are issued on behalf of the subdistrict, for the irrigation and benefit of which the district or subdistrict was organized and the bonds are issued or the contract is to be made, sufficient in *an* amount to pay the interest on and principal of the bonds when due and all amounts to be paid to the United States under any contract between the district and the United States for which bonds of the

district have not been deposited with the United States as provided in 85-7-1906."

Section 3. Section 85-7-2016, MCA, is amended to read:

"85-7-2016. Confirmation by district court. (1) Within 10 days after the adoption of the order or resolution mentioned in 85-7-2014, the board of commissioners shall file a petition in the district court of the judicial district where the office of the board is located to determine the validity of the proceedings relative to the issuance of the bonds and the levy of the special tax or assessment.

(2) ~~Such~~ *The* action ~~shall~~ *must* be in the nature of a proceeding in rem, and jurisdiction of all parties interested ~~shall~~ *must* be had by giving notice. The petition ~~shall~~ *must* set forth:

(a) generally, the establishment and organization of the district;

(b) a certified copy of the *election results or* petition ~~mentioned~~ *provided for* in 85-7-2013;

(c) a certified copy of the order or resolution ~~mentioned~~ *provided for* in 85-7-2014;

(d) a ~~prayer~~ *request* for the confirmation of the proceedings of the board stated in the petition and for the confirmation of the bond issue and the special tax or assessment levied to pay the bonds and interest thereon."

Section 4. Section 85-7-2032, MCA, is amended to read:

"85-7-2032. Amending or supplementing United States contracts — petition *or election* not necessary. ~~In case any~~ *If a* supplementary or amendatory contract ~~shall be~~ *is* made with the United States ~~hereunder~~ *under this part*, ~~no~~ *an election or* petition ~~as~~ required ~~by~~ *under* 85-7-2012 through 85-7-2015 ~~shall be necessary, nor shall~~ *is not necessary and* the board of commissioners of ~~such~~ *the* irrigation district ~~be~~ *is not* required to proceed under 85-7-2016 through 85-7-2018 for a judicial confirmation of the making of ~~such~~ *the* contract and the terms ~~thereof~~ *of the contract*. It ~~shall be~~ *is* sufficient in the case of a contract made with the United States ~~hereunder~~ *under this part* for the board of commissioners of any irrigation district to authorize the execution of the ~~same~~ *contract* by its president and secretary by appropriate resolution adopted at any regular or special meeting of ~~said~~ *the* board of commissioners."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 8, 2011

CHAPTER NO. 165

[HB 528]

AN ACT REVISING LAWS RELATING TO THE MONTANA COWBOY HALL OF FAME; REVISING LAWS RELATING TO ITS LOCATION; PROVIDING FOR ROAD SIGNS TO RECOGNIZE THE SITE; AND AMENDING SECTION 1-1-525, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-525, MCA, is amended to read:

"1-1-525. Montana cowboy hall of fame ~~— Wolf Point~~. (1) ~~The city of Wolf Point is designated as the site of the~~ *There is a* Montana cowboy hall of fame. *Once the recipient of the grant for site development and project planning authorized pursuant to section 4(7), Chapter 3, Special Laws of May 2007,*

determines the location of the Montana cowboy hall of fame, the grant recipient shall notify the department of commerce and the department of transportation.

(2) ~~The~~ *Once notified that the location of the Montana cowboy hall of fame is determined, the* department of commerce and the department of transportation shall identify ~~the city of Wolf Point~~ *the site* as the location of the Montana cowboy hall of fame on official state maps. *When existing road signs need replacement, the department of transportation shall provide appropriate markers to recognize the site.*"

Approved April 8, 2011

CHAPTER NO. 166

[HB 594]

AN ACT REQUIRING THE DEPARTMENT OF TRANSPORTATION TO USE POSTCONSUMER RECYCLED MATERIAL IN A HIGHWAY CONSTRUCTION PROJECT WHEN THE POSTCONSUMER RECYCLED MATERIAL MEETS SPECIFICATIONS AND THE COST IS LESS THAN OR EQUAL TO THE COST OF OTHER MATERIALS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Use of postconsumer recycled materials in highway construction projects. (1) The department shall use postconsumer recycled material in federal and state highway construction projects, including but not limited to use as:

(a) roadway fill material;

(b) roadway aggregates;

(c) bedding material;

(d) foundation material; and

(e) filter material.

(2) The department shall take procedural steps to provide for the incorporation of postconsumer recycled material into a highway project to ensure that:

(a) road construction projects use postconsumer recycled material when the cost is less than or equal to the cost of other materials used for the same purpose; and

(b) engineering standards demonstrate the acceptable use of postconsumer recycled material for a project.

(3) For the purposes of this section, "postconsumer recycled material" means recycled glass processed into glass cullet, reclaimed asphalt and concrete, and recycled tires.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 1].

Approved April 8, 2011

CHAPTER NO. 167

[HB 334]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; PROVIDING FOR CLOSURE OF CLAIMS; PROVIDING A PROCESS TO REOPEN MEDICAL CLAIMS; ESTABLISHING A MEDICAL DIRECTOR AND MEDICAL REVIEW PANEL; REVISING PERMANENT PARTIAL DISABILITY DEFINITION AND BENEFITS; CLARIFYING WHAT CONSTITUTES COURSE AND SCOPE OF EMPLOYMENT; ALLOWING RETROACTIVE BENEFIT PAYMENTS TO CERTAIN WORKERS; PROVIDING FOR SETTLEMENTS OF MEDICAL CLAIMS; PROVIDING FOR INSURER DESIGNATION OF TREATING PHYSICIANS; PROVIDING PAY SCALES FOR TREATING PHYSICIANS AND HEALTH CARE PROVIDERS; PROVIDING CERTAIN LIMITATIONS ON MEDICAL PAY SCHEDULES FOR THE BIENNIUM; REQUIRING THE LEGISLATIVE AUDITOR TO SUBMIT REPORTS ON THE MONTANA STATE FUND TO THE INSURANCE COMMISSIONER; REVISING VOCATIONAL REHABILITATION SERVICES AND TERMS TO ASSIST AN EMPLOYEE IN STAYING AT WORK OR RETURNING TO WORK; CREATING A STAY-AT-WORK/RETURN-TO-WORK ASSISTANCE FUND AND PROVIDING FOR ASSESSMENTS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 39-71-105, 39-71-116, 39-71-118, 39-71-225, 39-71-315, 39-71-320, 39-71-403, 39-71-407, 39-71-703, 39-71-704, 39-71-711, 39-71-721, 39-71-736, 39-71-741, 39-71-1011, 39-71-1025, 39-71-1031, 39-71-1101, 39-71-1102, 39-71-1106, AND 39-71-2361, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-105, MCA, is amended to read:

"39-71-105. Declaration of public policy. For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

(1) An objective of the Montana workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to ~~assist~~ *provide assistance to* a worker at a reasonable cost to the employer. ~~Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.~~ *Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.*

(2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(3) A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers'

compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(4) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(5) This chapter must be construed according to its terms and not liberally in favor of any party.

(6) It is the intent of the legislature that:

(a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

(b) for occupational disease claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than a single day or work shift and that it is within the legislature's authority to define an occupational disease and establish the causal connection to the workplace."

Section 2. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (4)(a) through (4)(e), does not exist.

(5) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(6) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(8) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.~~

~~(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.~~

~~(9)~~*(8)* (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71 to:

(i) determine liability;

(ii) apply the requirements of this title;

(iii) settle workers' compensation or occupational disease claims; or

(iv) determine survivor benefits.

(b) The term does not include an adjuster as defined in 33-17-102.

(9) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or occupational disease.

~~(12)~~*(13)* "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(14) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

~~(13)~~*(15)* (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(16) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights.

(b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or expense reimbursements for items such as meals, travel, or lodging.

~~(14)~~*(17)* "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(15)~~*(18)* "Invalid" means one who is physically or mentally incapacitated.

~~(16)~~*(19)* "Limited liability company" has the meaning provided in 35-8-102.

~~(17)~~*(20)* "Maintenance care" means treatment designed to provide the optimum state of health ~~while minimizing recurrence of the clinical status~~ *while minimizing recurrence of the clinical status*.

~~(18)~~*(21)* "Medical stability", *"maximum medical improvement",* "maximum healing", or "maximum medical healing" means a point in the healing process when further material *functional* improvement would not be reasonably expected from primary medical ~~treatment~~ *services*.

~~(19)~~*(22)* "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(20)~~*(23)* (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.

(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

~~(21)~~*(24)* "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.

~~(22)~~*(25)* "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(23)~~*(26)* "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(24)~~*(27)* "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment*, as determined by the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, that is* established by objective medical findings *for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease and may not be based exclusively on complaints of pain*~~;~~*.*

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

~~(25)~~*(28)* "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. ~~Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state.~~ Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(26)~~*(29)* "Primary medical services" means treatment prescribed by ~~a~~ *the* treating physician, for conditions resulting from the injury *or occupational disease*, necessary for ~~achieving~~ *achieving* medical stability.

~~(27)~~*(30)* "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

~~(28)~~*(31)* "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(29)~~*(32)* "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(33) "Regular employment" means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state.

~~(30)~~*(34)* (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection ~~(30)~~ *(34)*, "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

~~(31)~~*(35)* "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(32)~~*(36)* "State's average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number.

~~(33)~~*(37)* "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(34)~~*(38)* "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(35)~~*(39)* "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(36)~~*(40)* "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(37)~~*(41)* "Treating physician" means ~~a~~ *the* person ~~who is~~ *who, subject to the requirements of 39-71-1101, is* primarily responsible for *delivery and coordination of the worker's medical services for* the treatment of a worker's compensable injury *or occupational disease* and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection ~~(37)(a)~~ *(41)(a)*, in the area where the physician assistant is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections ~~(37)(a)~~ *(41)(a)* through ~~(37)(e)~~ *(41)(e)* who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

~~(38)~~*(42)* "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

~~(39)~~*(43)* "Year", unless otherwise specified, means calendar year."

Section 3. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named

insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

~~(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;~~

~~(b)~~*(a)* performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

~~(c)~~*(b)* performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection ~~(2)(c)~~ *(2)(b)*, "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

~~(d)~~*(c)* serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection ~~(2)(c)~~ *(2)(b)*.

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the

amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(5)(d)~~ *(6)(d)*. A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 4. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, ~~medical~~ *health care* providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation.

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution; and

(d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement by the subsequent injury fund.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 5. Section 39-71-315, MCA, is amended to read:

"39-71-315. Prohibited actions — penalty. (1) The following actions by a ~~medical~~ *health care* provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to certify the provision of the services or treatment for which compensation is claimed under this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. Penalties collected pursuant to this section must be paid into the state general fund. The workers' compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 6. Section 39-71-320, MCA, is amended to read:

"39-71-320. Voluntary certification program for claims examiners — purpose — rulemaking — advisory committee — continuing education. (1) Pursuant to the public policy stated in 39-71-105, accurate and prompt claims handling practices are necessary to provide appropriate service to injured workers, employers, and ~~medical~~ *health care* providers. In order to further that public policy, the purpose of this section is to authorize the department to establish a voluntary certification program for claims examiners. The department shall administer the voluntary certification program.

(2) The voluntary certification program is intended to improve the handling of workers' compensation claims by:

(a) establishing minimum qualifications and procedures for certifying claims examiners;

(b) requiring continuing education for certified claims examiners;

(c) better educating certified claims examiners about changes in the law; and

(d) providing standards for the qualifications of instructors, courses, and materials.

(3) The department shall adopt rules for the certification of workers' compensation claims examiners, providing for:

(a) minimum qualifications;

(b) examination;

(c) 2-year certification and renewal;

(d) continuing education requirements; and

(e) a waiver of the examination requirement for an individual requesting certification as a claims examiner within the first 12 months after the department has adopted the initial rules under this subsection (3). The waiver is available only to an individual who has been actively engaged in the work of a claims examiner in this state, working on workers' compensation claims for 5 of

the 7 years immediately preceding the individual's application for certification under this section.

(4) The department may appoint an advisory committee composed of injured workers, insurers, self-insured employers, third-party administrators, claims examiners, and members of the public to advise the department on setting standards for certification and continuing education.

(5) The department shall maintain:

(a) a list of all certified claims examiners; and

(b) the following records related to certified claims examiners:

(i) documentation of current and historical certifications;

(ii) beginning and ending dates of certifications; and

(iii) continuing education records.

(6) The training curriculum and continuing education used by insurers, self-insured employers, and third-party administrators for claims examiners must relate to the state workers' compensation system or to interactions among injured workers, medical providers, and employers. The training curriculum, course content, instructors, materials, instructional format, and the sponsoring organization must be approved by the department as qualifying for use in certification of claims examiners. The department may offer specialized training for continuing education purposes that is exempt from the approval requirements of this subsection.

(7) The department shall determine the number of credit hours to be awarded for completion of an approved training curriculum or department-approved specialized training. The department may accept continuing education credits approved by the insurance commissioner's office as provided in Title 33, chapter 17, the office of public instruction, or the state bar of Montana to satisfy the continuing education requirements for renewal of the claims examiner certification. The department, in its discretion, may accept continuing education credits from other accrediting sources.

(8) The department shall by rule adopt fees commensurate with the costs of administering the voluntary certification program. All fees collected by the department as provided in this section must be deposited in the workers' compensation administration fund provided for in 39-71-201. The department may charge a fee for the certification program, including but not limited to fees for:

(a) initial certification, including examination;

(b) certification renewal;

(c) approval of training curricula, including continuing education courses, course content, instructors, materials, instructional format, and sponsoring organizations; and

(d) specialized training offered by the department."

Section 7. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies — election of plan by public corporations — financing of self-insurance fund — exemption for university system — definitions — rulemaking. (1) (a) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency

shall pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(b) (i) Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall manage workers' compensation insurance coverage for all state agencies.

(ii) The state fund shall provide the department of administration with all information regarding the state agencies' coverage.

(iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon mutual agreement between the department of administration and the state fund, the state fund shall issue one or more policies for all state agencies.

(iv) In any year in which the workers' compensation premium due from a state agency is lower than in the previous year, the appropriation for that state agency must be reduced by the same amount that the workers' compensation premium was reduced and the difference must be returned to the originating fund instead of being applied to other purposes by the state agency submitting the premium.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions that the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) For the purposes of subsection (1)(b), the judicial branch or the legislative branch may choose not to have the department of administration manage its workers' compensation policy.

(6) The department of administration may adopt rules to implement subsection (1)(b)(i).

(7) As used in this section, the following definitions apply:

(a) "Public corporation" includes the Montana university system.

(b) (i) "State agency" means:

(A) the executive branch and its departments and all boards, commissions, committees, bureaus, and offices;

(B) the judicial branch; and

(C) the legislative branch.

(ii) The term does not include the Montana university system."

Section 8. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers — limitations. (1) For workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) An injury does not arise out of and in the course of employment when the employee is:

(a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break; or

(b) engaged in a social or recreational activity, regardless of whether the employer pays for any portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity or whose presence at the activity is required or requested by the employer. For the purposes

of this subsection (2)(b), "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

~~(2)~~*(3)* (a) An insurer is liable for an injury, as defined in 39-71-119, *only* if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury *has occurred and* aggravated a preexisting condition.

~~(b)~~*(b)* Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

~~(3)~~*(4)* (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

~~(4)~~*(5)* An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

~~(5)~~*(6)* If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

~~(6)~~*(7)* If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

~~(7)~~*(8)* An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

~~(8)~~*(9)* For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 *if the employee is diagnosed* with ~~an~~ *a*

compensable occupational disease ~~that arises out of or is contracted in the course and scope of employment~~.

~~(9) Occupational diseases are considered to arise out of employment or be contracted in the course and scope of employment if:~~

(10) An insurer is liable for an occupational disease only if the occupational disease:

~~(a)~~*(a)* ~~the occupational disease~~ is established by objective medical findings; and

~~(b)~~*(b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if* the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.

~~(10)~~*(11)* When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

~~(11)~~*(12)* When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease was first diagnosed by a ~~treating physician or medical panel~~ *health care provider*; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease.

~~(12)~~*(13)* In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

~~(13)~~*(14)* As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 9. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment ~~rating~~ *rating as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease* that:

(i) is not based exclusively on complaints of pain;

(ii) is established by objective medical findings~~; and~~*; and*

(iii) is more than zero.

~~(iii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.~~

(2) ~~When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the~~ *When a worker receives a Class 2 or greater class of impairment as converted to the whole person, as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition, and has no actual wage loss as a result of the compensable injury or occupational disease, the* worker is eligible *to receive payment* for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by ~~375~~ *400* weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the *whole person* impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum ~~conversions~~ *payments* for benefits not accrued may be reduced to present value at the rate established by the department pursuant to ~~39-71-741(3)~~ *39-71-741(5)*.

(8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the

wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(10) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 10. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury *or occupational disease* and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services*, including prescription drugs* for conditions ~~resulting from~~ *that are a direct result of* the *compensable* injury *or occupational disease,* for those periods ~~as the nature of the injury or the process of recovery requires~~ *specified in this section*.

(b) ~~The~~ *Subject to the limitations in this chapter, the* insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a ~~medical~~ *health care* provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a ~~medical~~ *health care* provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed $2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) *(i)* ~~Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the~~ *The* benefits provided for in this section terminate ~~when they are not used for a period of 60 consecutive~~ *60* months *from the date of injury or diagnosis of an occupational disease. A worker may request reopening of medical benefits that were terminated under this subsection (1)(f) as provided in [section 29].*

(ii) Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury or occupational disease or for the repair or replacement of a prosthesis furnished as a direct result of a compensable injury or occupational disease.

(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) (a) The department shall annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. *Regardless of the date of injury, payment for medical services is based on the fee schedule rates in this section in effect on the date on which the medical service is provided.* Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(b) (i) The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by up to the top five insurers or third-party administrators providing group health insurance coverage within this state who use the resource-based relative value scale to determine fees for covered services. To be included in the rate determination, the insurer or third-party administrator must occupy at least 1% of the market share for group health insurance policies as reported annually to the state auditor.

(ii) The insurers or third-party administrators included under subsection (2)(b)(i) shall provide their standard conversion rates to the department.

(iii) The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2).

(iv) The department shall maintain the confidentiality of the conversion rates.

(c) From July 1, 2011, through June 30, 2013, the fee schedules established in subsection (2)(b) must be based on the following standards as adopted by the centers for medicare and medicaid services and as adopted by the department on December 31, 2010, regardless of where services are provided:

(i) the American medical association current procedural terminology codes;

(ii) the healthcare common procedure coding system;

(iii) the medicare severity diagnosis-related groups;

(iv) the ambulatory payment classifications;

(v) the ratio of costs to charges for each hospital;

(vi) the national correct coding initiative edits; and

(vii) the relative value units as adjusted annually using the most recently published resource-based relative value scale.

~~(c)~~*(d)* ~~The~~ *On or after July 1, 2013, the* fee schedule rates established in subsection (2)(b) must be based on the following standards as adopted by the centers for medicare and medicaid services ~~in effect at the time the services are provided~~, regardless of where services are provided:

(i) the American medical association current procedural terminology codes*, as those codes exist on March 31 of each year*;

(ii) the healthcare common procedure coding system*, as those codes and their relative weights exist on March 31 of each year*;

(iii) the medicare severity diagnosis-related groups*, as those codes and their relative weights exist on October 1 of each year*;

(iv) the ambulatory payment classifications*, as those codes and their relative weights exist on March 31 of each year*;

(v) the ratio of costs to charges for each hospital*, as those codes exist on October 1 of each year*;

(vi) the national correct coding initiative edits*, as those codes exist on March 31 of each year*; and

(vii) the relative value units ~~as adjusted annually using the most recently~~ *in the* published resource-based relative value scale*, as those codes exist on March 31 of each year*.

~~(d)~~*(e)* The department may establish additional ~~coding standards~~ *codes and coding standards* for use by providers when billing for medical services under this section.

(f) The rates in effect through June 30, 2013, may not be less than the rates for medical services in effect as of December 31, 2010.

(3) (a) The department ~~may~~ *shall* establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the *adopted* utilization and treatment guidelines ~~established by the department are correct medical treatment for the injured worker~~ *establish compensable medical treatment for an injured worker*.

(b) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.

(c) The department ~~may establish by rule~~ *shall hire a medical director. The department may establish by rule* an independent medical review process ~~for~~ *for* treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

(d) The department, in consultation with health care providers with relevant experience and education, shall provide for an annual review of the evidence-based utilization and treatment guidelines to consider amendments or changes to the guidelines.

(4) For services available in Montana, insurers may pay facilities located outside Montana according to the workers' compensation fee schedule of the state where the medical service is performed.

(5) (a) An insurer shall make payments at the fee schedule rate within 30 days of receipt of medical bills for which a claim has been accepted and for which no other disputes exist. Disputes must be defined by the department by rule.

(b) Any unpaid balance under this subsection (5) accrues interest at 12% a year or 1% a month or a fraction of a month. If the charge is not paid within 30 days, interest on the unpaid balance accrues from the date of receipt of the original billing.

(6) Once a determination has been made regarding the correct reimbursement amount, any overpayment made to a ~~medical~~ *health care* provider must be reimbursed to the insurer within 30 days of the determination. Any reimbursement amount remaining unpaid after 30 days accrues interest at 12% a year or 1% a month or a fraction of a month. Interest on the reimbursement amount remaining unpaid accrues from the date of receipt of the determination of the correct reimbursement amount.

(7) For a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge.

(8) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(9) After mediation pursuant to department rules, an unresolved dispute between an insurer and a ~~medical service~~ *health care* provider regarding the amount of a fee for medical services may be brought before the workers' compensation court.

(10) (a) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection (10), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (10)(a) if the visit is for treatment requested by an insurer."

Section 11. Section 39-71-711, MCA, is amended to read:

"39-71-711. Impairment evaluation — ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the ~~current~~ *sixth* edition of the *American medical association* Guides to *the* Evaluation of Permanent Impairment ~~published by the American medical association~~;

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings *and may not be based exclusively on complaints of pain*.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator if the injury falls within the scope of the evaluator's practice and if the evaluator is one of the following:

(a) a physician or an osteopath licensed under Title 37, chapter 3, with admitting privileges to practice in one or more hospitals, if any, in the area where the physician or osteopath is located;

(b) a chiropractor licensed under Title 37, chapter 12;

(c) a physician assistant licensed under Title 37, chapter 20, if there is not a physician as provided for in subsection (2)(a) in the area where the physician assistant is located;

(d) a dentist licensed under Title 37, chapter 4;

(e) an advanced practice registered nurse licensed under Title 37, chapter 8; or

(f) for a claimant residing out of state or upon approval of the insurer, an evaluator referred to in subsections (2)(a) through (2)(e) who is licensed or certified in another state.

(3) If the claimant and insurer cannot agree upon the rating, the mediation procedure in Title 39, chapter 71, part 24, must be followed.

(4) Disputes over impairment ratings are subject to the provisions of 39-71-605."

Section 12. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death — limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer

shall recover the payments from the beneficiary's biweekly payments as provided in ~~39-71-741(3)~~ *39-71-741(5)*.

(2) To beneficiaries as defined in 39-71-116(4)(a) through (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of death.

(3) To beneficiaries as defined in 39-71-116(4)(e) and (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(4)(b) through (4)(d).

(6) In all cases, benefits must be paid to beneficiaries.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702."

Section 13. Section 39-71-736, MCA, is amended to read:

"39-71-736. Compensation — from what dates paid. (1) (a) ~~Compensation~~ *Except as provided in subsection (1)(c), compensation* may not be paid for the first 32 hours or 4 days' loss of wages, whichever is less, that the ~~claimant~~ *worker* is totally disabled and unable to work because of an injury. A ~~claimant~~ *worker* is eligible for compensation starting with the 5th day.

(b) Separate benefits of medical and hospital services must be furnished from the date of injury.

(c) If the worker is totally disabled and unable to work in any capacity for 21 days or longer, compensation must be paid retroactively to the first day of total wage loss unless the worker waives the payment as provided in subsection (2)(b)(ii).

(2) *(a)* For the purpose of this section, except as provided in subsection (3), ~~an injured~~ *a* worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 4-day waiting period.

(b) A worker who is entitled to receive retroactive compensation benefits pursuant to subsection (1)(c) but who took sick leave as provided in subsection (2)(a) may elect to either:

(i) repay the employer the amount of salary for the sick leave received; or

(ii) waive the retroactive payment of benefits attributable to any days or hours for which the worker received sick leave.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by ~~an injured~~ *a* worker may not affect the worker's eligibility for temporary total disability benefits."

Section 14. Section 39-71-741, MCA, is amended to read:

"39-71-741. ~~Compromise settlements~~ *Settlements* and lump-sum payments — *legislative intent.* (1) By written agreement, *a claimant and an insurer may convert* benefits under this chapter ~~may be converted~~ in whole or in part into a lump sum. An agreement that settles a claim for any type of benefit is subject to department approval *as provided in subsection (2).* Lump-sum advances and payment of accrued benefits in a lump sum, except permanent total disability benefits under subsection ~~(1)(c)~~ *(2)(c)*, are not subject to department approval. If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved.

(2) The department shall directly notify a claimant of a department order approving or disapproving a claimant's ~~compromise~~ *settlement* or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve ~~an~~ *a settlement* agreement to convert the following benefits to a lump sum only under the following conditions:

(a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;

(b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any ~~permanent partial~~ lump-sum ~~conversion~~ *payment* in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection ~~(1)(b)~~ *(2)(b)* only if the department determines that the lump-sum ~~conversion~~ amount is inadequate.

(c) permanent total disability benefits if the total of all lump-sum ~~conversions~~ *payments* in part that are awarded to a claimant do not exceed $20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(d) except as otherwise provided in this chapter, all other ~~compromise~~ settlements and lump-sum payments agreed to by a claimant and insurer; ~~or~~

(e) medical benefits on an accepted claim if an insurer disputes the insurer's continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability*; or*

(f) medical benefits on an accepted claim if the claimant has reached maximum medical improvement and the following applicable conditions are met:

(i) the insurer and claimant mutually agree to a settlement of all or a portion of medical benefits; and

(ii) a settlement is in the best interest of the parties to the settlement.

(3) The parties to a medical settlement agreement shall set out the rationale that is the basis for the settlement under subsection (2)(f), and the claimant shall indicate by a signed acknowledgment an understanding of what medical benefits will terminate because of that settlement.

~~(2)~~*(4)* Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection ~~(3)(b)~~ *(5)(b)*.

~~(3)~~*(5)* (a) An insurer may recoup any lump-sum ~~payment~~ *advance* amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

~~(4)~~*(6)* A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination.

(7) If an insurer and a claimant agree to a ~~compromise and release~~ settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision *without requesting mediation*.

(8) The legislature does not intend to allow settlement of undisputed medical claims under subsection (2)(f) unless all parties willingly agree to the settlement. The failure of the parties to willingly agree to a settlement does not constitute a dispute concerning benefits."

Section 15. Section 39-71-1011, MCA, is amended to read:

"39-71-1011. Definitions. As used in this ~~chapter~~ *part*, the following definitions apply:

(1) "Assistance fund" means the stay-at-work/return-to-work assistance fund provided for in [section 19].

~~(1)~~*(2)* "Commission on rehabilitation counselor certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation ~~practitioners~~ *providers*.

~~(2)~~*(3)* "Disabled worker" means a worker who has a permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.

(4) "Insurer's stay-at-work/return-to-work assistance policy" or "assistance policy" means a written stay-at-work/return-to-work policy that explains to the worker the process of evaluation, planning, implementation, and provision of services by the insurer prior to the determination that the worker meets the definition of a disabled worker. The services are intended to facilitate a worker's return to work as soon as possible following the worker's injury or occupational disease. This assistance may include a rehabilitation plan.

~~(3)~~*(5)* "Rehabilitation benefits" means benefits provided in 39-71-1006 and 39-71-1025.

~~(4)~~*(6)* "Rehabilitation plan" means a written individualized plan that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification and that reasonably reduces the worker's actual wage loss.

~~(5)~~*(7)* "Rehabilitation provider" means a rehabilitation counselor certified by the commission on rehabilitation counselor certification and designated by the insurer.

~~(6)~~*(8)* "Rehabilitation services" means a program of evaluation, planning, and implementation of a rehabilitation plan to assist a disabled worker to return to work.

(9) "Stay-at-work/return-to-work assistance" or "assistance" means the evaluation, planning, implementation, and provision of appropriate services prior to the determination that the worker meets the definition of a disabled worker that are designed to facilitate a worker's return to work as soon as possible following the worker's injury or occupational disease. This assistance may include a rehabilitation plan."

Section 16. Stay-at-work/return-to-work goals and options — notification by department — agreement between worker and insurer. (1) The goal of stay-at-work/return-to-work assistance is to minimize avoidable disruption caused by a work-related injury or occupational disease by assisting the worker in the worker's return to the same position with the same employer or to a modified position with the same employer as soon as possible after an injury or an occupational disease occurs.

(2) To further the goal in subsection (1), the department shall, upon receipt from the insurer of a report of injury or occupational disease pursuant to 39-71-307(2), distribute to the worker a document that describes the stay-at-work/return-to-work assistance that is available upon request by the worker.

(3) Services provided as part of stay-at-work/return-to-work assistance are provided in addition to or prior to rehabilitation services and are intended to help a worker return to work.

Section 17. Request for and delivery of stay-at-work/return-to-work assistance. (1) (a) A worker who is claiming an injury or occupational disease, an employer, or a medical provider may ask that the department furnish stay-at-work/return-to-work assistance. After the worker signs a claim for benefits, the department shall promptly attempt to determine which insurer is at risk for the injury or occupational disease and contact that insurer. The department shall advise the insurer of the request for stay-at-work/return-to-work assistance and shall coordinate the assistance with the insurer.

(b) If an insurer has accepted liability for the claim, the insurer shall provide stay-at-work/return-to-work assistance either in accordance with the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services. The insurer is directly liable for paying for the stay-at-work/return-to-work assistance furnished.

(c) If an insurer at risk has not accepted liability for the claim, the insurer may choose one of the following actions:

(i) The insurer at risk for the claim may initiate stay-at-work/return-to-work assistance either in accordance with the insurer's

stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services and shall notify the department within 3 business days of being contacted by the department that the insurer is acting under this subsection (1)(c)(i). If the insurer provides either type of assistance, the insurer becomes responsible for directly paying for the assistance. Payment of assistance pursuant to this subsection (1)(c)(i) does not constitute admission of liability or a waiver of any right of defense.

(ii) If the insurer at risk for the claim does not notify the department within 3 business days of being contacted by the department that the insurer will provide assistance, the department shall obtain stay-at-work/return-to-work assistance for the worker by designating a rehabilitation provider.

(d) If the department cannot promptly determine which insurer is at risk for coverage, the department shall obtain stay-at-work/return-to-work assistance for the worker by designating a rehabilitation provider.

(e) A rehabilitation provider designated by the department under this section shall bill the department for services provided. The department shall pay for the stay-at-work/return-to-work assistance out of the assistance fund until the maximum allowed amount of assistance is provided or until the insurer denies the claim and notifies the department of the denial.

(f) If an insurer is providing assistance pursuant to the insurer's stay-at-work/return-to-work assistance policy, the insurer shall provide in writing to a worker, with a copy to the department, an explanation of the stay-at-work/return-to-work assistance being provided to the worker under this section and shall include contact information for the person providing the assistance.

(2) Rather than make a request to the department, a worker, an employer, or a medical provider may directly ask the insurer to provide stay-at-work/return-to-work assistance.

(3) In the absence of a request by a worker, an employer, or a medical provider, an insurer may initiate and provide stay-at-work/return-to-work assistance by providing the worker with a copy of the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services.

(4) Stay-at-work/return-to-work assistance requested under this section is available as a service apart from a determination regarding indemnity benefits. A worker or an employer may decline to accept stay-at-work/return-to-work assistance. The failure of a worker to voluntarily agree to assistance is not a dispute concerning benefits. However, if the assistance provided under this part results in a job offer for a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury and the worker refuses the offer, the workers' indemnity benefits may end as provided in 39-71-701 and 39-71-712.

(5) Stay-at-work/return-to-work assistance is available at any time unless:

(a) the worker, prior to a determination that the worker meets the definition of a disabled worker, has refused a job offer for a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury;

(b) the worker has actually returned to work; or

(c) the claim has been closed pursuant to 39-71-704(1)(f)(i) or indemnity benefits have been settled pursuant to the definition of a settled claim in 39-71-107.

(6) If the insurer determines that the worker has not suffered a compensable injury or occupational disease and denies liability for the claim, the insurer or the department shall terminate any stay-at-work/return-to-work assistance that was initiated before the insurer's denial of liability.

Section 18. Rehabilitation provider — evaluation. (1) Stay-at-work/return-to-work assistance must be provided by a rehabilitation provider pursuant to this section if:

(a) the department provides assistance; or

(b) an insurer elects to designate a rehabilitation provider instead of using the insurer's own stay-at-work/return-to-work assistance policy.

(2) (a) The rehabilitation provider shall evaluate and determine the stay-at-work/return-to-work capabilities of the worker pursuant to the stay-at-work/return-to-work goals listed in [section 16].

(b) If the worker has returned to work, the rehabilitation provider shall provide documentation of the assistance to the worker, the insurer, and the department.

(c) If the worker has not returned to work and has not received a job offer to return to work, the rehabilitation provider shall document the reasons the stay-at-work/return-to- work assistance was unsuccessful. The documentation must be provided to the worker, the insurer, the treating physician, and the department.

(d) The following conditions allow termination of assistance prior to the time a worker meets the definition of a disabled worker:

(i) the worker has returned to work earning wages that are at least as much as at the time of injury;

(ii) the worker has received an offer to return to work at a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury;

(iii) the worker has returned to work in an alternative position that pays less than the worker's wages at the time of injury and that qualifies the worker for temporary partial disability benefits pursuant to 39-71-712; or

(iv) the worker receives a job offer to return to work in a position that is within the worker's physical abilities, for which the worker is qualified, for which the wages are less than the worker's wages at the time of injury, and that qualifies the worker for temporary partial disability benefits under 39-71-712.

(e) If a worker has requested stay-at-work/return-to-work assistance and a rehabilitation plan has been agreed to by the worker and the insurer, the plan continues until completed.

(3) If the worker or insurer disputes the availability or level of assistance, the worker or insurer may, after mediation, petition the workers' compensation court for resolution of the dispute.

Section 19. Stay-at-work/return-to-work assistance fund — purpose — payment process — rulemaking. (1) There is a stay-at-work/return-to-work assistance fund in the proprietary fund category.

(2) The purpose of the assistance fund is to pay for stay-at-work/return-to-work assistance provided by the department so that assistance may be provided as early as practicable in the workers' compensation claims process.

(3) (a) The department may establish by rule:

(i) the amounts and types of assistance to be provided; and

(ii) the maximum hourly rate that may be charged for stay-at-work/return-to-work assistance obtained by the department and paid for by the assistance fund.

(b) The rules adopted under subsection (3)(a) regarding the payment amounts to rehabilitation providers do not apply if the insurer has taken direct responsibility for providing stay-at-work/return-to-work assistance.

(c) If rules are not adopted to implement subsection (3)(a), the department may not provide more than $2,000 in assistance.

Section 20. Assessment for stay-at-work/return-to-work assistance fund — definition. (1) (a) The assistance fund must be maintained by assessing employers insured by plan No. 1, plan No. 2, and plan No. 3 an amount as provided in subsections (2) through (10).

(b) The board of investments shall invest the money in the assistance fund. The investment income must be deposited in the assistance fund.

(2) The assessment amount is the total amount paid by the assistance fund in the preceding fiscal year less other realized income that is deposited in the assistance fund. Allocation of the total assessment amount among employers insured by plan No. 1, plan No. 2, and plan No. 3 must be based on each plan's proportionate share of money expended from the assistance fund for the calendar year preceding the year in which the assessment is collected.

(3) On or before May 31 of each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. On or before April 30 of each year, the department shall consult with the advisory organization designated under 33-16-1023 and notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge rate to be effective for policies written or renewed on or after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is the amount actually expended by the assistance fund on behalf of injured workers employed by that plan No. 1 employer. A group of employers insured jointly under plan No. 1 is considered to be an individual employer for the purposes of this subsection.

(5) After subtracting plan No. 1 assessments from the total assessment, the department shall determine the surcharge rate for plan No. 2 insurers and plan No. 3, the state fund, by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided in subsection (9).

(6) Employers insured under plan No. 2 or plan No. 3 shall pay their portion of the assessment in a surcharge on premiums for policies written or renewed annually on or after July 1.

(7) (a) Each plan No. 2 insurer and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (5). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation stay-at-work/return-to-work assistance fund surcharge". Each assessment premium surcharge must be shown as a

percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner as the premium for the coverage. The assessment premium surcharge must be excluded from the definition of premium for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(b) If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge described in 39-71-201 first, then to the assessment premium surcharge in this section, and then to the surcharge in 39-71-915, with any remaining amount applied to the premium due.

(8) (a) The department shall deposit all assessments due under this section into the assistance fund.

(b) Each plan No. 1 employer shall pay its assessment due under this section by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter no later than 20 days following the end of the quarter.

(d) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the assistance fund.

(9) Each year, the department shall compare the amount of the assessment premium surcharge actually collected pursuant to subsection (5) with the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator for the following year's assessment premium surcharge as provided in subsection (5).

(10) If the total assessment is less than $100,000 for any year, the department may defer the assessment for that year and add that amount to the assessment amount for the subsequent year.

(11) As used in this section, "money expended" means expenditures for stay-at-work/return-to-work assistance from the assistance fund.

Section 21. Rulemaking authority. The department may adopt rules to implement this part.

Section 22. Section 39-71-1025, MCA, is amended to read:

"39-71-1025. Auxiliary ~~rehabilitation~~ benefits. *(1)* In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of $4,000*, adjusted as provided in subsection (2),* may be paid by the insurer for *specialized job modification,* reasonable travel, and relocation expenses used ~~to~~ *for any of the following*:

~~(1)~~*(a)* search for new employment;

~~(2)~~*(b)* return to work but in a new location;

~~(3)~~*(c)* ~~implement~~ *the implementation of* a rehabilitation plan that has been filed with the department; ~~and~~ *or*

~~(4)~~*(d)* ~~attend~~ *attendance at* an on-the-job training program.

(2) The separate benefit may be adjusted by an amount that is the percentage increase, if any, in the current state's average weekly wage over the state's average weekly wage adopted for the previous year."

Section 23. Section 39-71-1031, MCA, is amended to read:

"39-71-1031. Exchange of information. The ~~insurer's designated~~ *insurer, the* rehabilitation provider, and the department shall provide to one another case information as necessary to carry out the purposes of this part."

Section 24. Section 39-71-1101, MCA, is amended to read:

"39-71-1101. Choice of ~~physician~~ *health care provider* by worker — ~~change~~ *insurer designation or approval* of *treating* physician — ~~receipt of care from~~ *or* managed care organization — *payment terms* — *definition.* (1) ~~Subject to subsection (3),~~ *Prior to the insurer's designation or approval of a treating physician as provided in subsection (2) or a referral to a managed care organization or preferred provider organization as provided in subsection (7),* a worker may choose ~~the~~ *a person who is listed in 39-71-116(41) for* initial ~~treating physician within the state of Montana~~ *treatment. Subject to subsection (2), if the person listed under 39-71-116(41) chosen by the worker agrees to comply with the requirements of subsection (2), that person is the treating physician.*

(2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a treating physician who agrees to assume the responsibilities of the treating physician. The designated or approved treating physician:

(a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-704;

(b) shall provide timely determinations required under this chapter, including but not limited to maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide documentation;

(c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior approval for other treatment; and

(d) shall conduct or arrange for timely impairment ratings.

(3) The treating physician may refer the worker to other health care providers for medical services, as provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health care provider to whom the worker is referred by the designated treating physician is not responsible for coordinating care or providing determinations as required of the treating physician.

(4) The treating physician designated or approved by the insurer must be reimbursed at 110% of the department's fee schedule.

(5) A health care provider to whom the worker is referred by the treating physician must be reimbursed at 90% of the department's fee schedule.

(6) A health care provider providing health care on a compensable claim prior to the designation or approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule.

~~(2) Authorization by the insurer is required to change treating physicians. If authorization is not granted, the~~

(7) Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the department in 39-71-704 and the percentages referenced in subsections (4) through (6) apply to the medical service on the date on which the medical service was provided.

(8) The insurer ~~shall~~ *may* direct the worker to a managed care organization~~, if any, or to a medical service provider who qualifies as a treating physician, who shall then serve as the worker's~~ *or a preferred provider organization for designation of the* treating physician.

~~(3)~~*(9)* ~~A medical service~~ *After the insurer directs a worker to a managed care organization or preferred provider organization, a health care* provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer~~, if:~~

~~(a) the injury results in a total loss of wages for any duration;~~

~~(b) the injury will result in permanent impairment;~~

~~(c) the injury results in the need for a referral to another medical provider for specialized evaluation or treatment; or~~

~~(d) specialized diagnostic tests, including but not limited to magnetic resonance imaging, computerized axial tomography, or electromyography, are required~~.

~~(4)~~*(10)* After the date that a worker whose injury is subject to the provisions of subsection ~~(3)~~ *(8)* receives individual written notice of a referral ~~to a managed care organization~~, the worker must, unless otherwise authorized by the insurer, receive medical services from the ~~managed care~~ organization designated by the insurer, in accordance with *39-71-1102 and* 39-71-1104. The designated treating physician in the ~~managed care~~ organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a ~~medical service~~ *health care* provider who is not a member of a managed care organization *or a preferred provider organization*.

~~(5)~~*(11)* Posting of managed care requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to a managed care organization must be provided to the worker in written form by mail or in person after the date ~~that the~~ *of* injury *or occupational disease* ~~meets the provisions of subsection (3). The notice must advise the worker of the worker's right to choose the initial treating physician under subsection (1).~~

~~(6) Any postings or other information regarding referral to a managed care organization on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to a managed care organization, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection (1).~~"

Section 25. Section 39-71-1102, MCA, is amended to read:

"39-71-1102. Preferred provider organizations — establishment — limitations. (1) In order to promote cost containment of medical care provided for in 39-71-704, development of preferred provider organizations by insurers is encouraged. Insurers may establish arrangements with suppliers of soft and durable medical goods and ~~medical~~ *health care* providers in addition to or in

conjunction with managed care organizations. Workers' compensation insurers may contract with other entities to use the other entities' preferred provider organizations. After the date that an injured worker is given an individual written notice by the insurer of a preferred provider, the insurer is not liable for charges from nonpreferred providers. ~~This section does not prohibit the worker from choosing the initial treating physician under 39-71-1101(1).~~

(2) Posting of preferred provider requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to preferred providers must be provided to the worker in written form by mail or in person after the date of injury. ~~The notice must advise the worker of the worker's right to choose the initial treating physician under 39-71-1101(1).~~

~~(3) Any postings or other information regarding referral to preferred providers on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to preferred providers, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection 39-71-1101(1).~~"

Section 26. Section 39-71-1106, MCA, is amended to read:

"39-71-1106. Compliance with medical treatment required — termination of compensation benefits for noncompliance. An insurer that provides 14 days' notice to the worker and the department may terminate any compensation benefits that the worker is receiving until the worker cooperates, if the insurer believes that the worker is unreasonably refusing:

(1) to cooperate with a managed care organization*, a preferred provider organization,* or *the* treating physician;

(2) to submit to medical treatment recommended by the treating physician, except for invasive procedures; or

(3) to provide access to health care information to ~~medical~~ *health care* providers, the insurer, or an agent of the insurer."

Section 27. Section 39-71-2361, MCA, is amended to read:

"39-71-2361. Legislative audit of state fund — *annual review of audit and rate review by insurance commissioner*. The legislative auditor shall annually*:*

(1) conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

(2) provide the results of the financial and compliance audit for operations related to claims for injuries resulting from accidents on or after July 1, 1990, as provided in subsection (1), and the rate review as provided in 39-71-2362 to the insurance commissioner. The insurance commissioner shall review the financial and compliance audit and rate review and report any concerns or recommendations based on the review to the governor, the legislative audit committee, and the economic affairs interim committee."

Section 28. Medical status form. (1) The department shall create a medical status form to be provided to a health care provider providing treatment for a compensable injury or occupational disease.

(2) The form must contain, at a minimum, the following information:

(a) the worker's first and last names and claim number;

(b) the diagnosed condition that is a direct result of the compensable injury or occupational disease;

(c) the treatment plan for the worker;

(d) identification of any medications prescribed for treatment of the worker;

(e) the timeframe during which the treating physician recommends that the worker be completely off work;

(f) the date or anticipated date of the worker's release to modified duty;

(g) the date or anticipated date of the worker's release to full duty;

(h) any temporary work restrictions applicable to the worker;

(i) any permanent work restrictions applicable to the worker;

(j) the anticipated date of maximum medical improvement; and

(k) the date of the worker's next appointment.

(3) An insurer may request additional information from the health care provider not contained in the department's form.

(4) The treating physician or a designee shall complete the form following every office visit with the worker.

Section 29. Reopening of terminated medical benefits — medical review. (1) A petition to reopen medical benefits that terminate under 39-71-704(1)(f) must be reviewed as provided in this section.

(2) Medical benefits may be reopened only if the worker's medical condition is a direct result of the compensable injury or occupational disease and requires medical treatment in order to allow the worker to continue to work or return to work. Medical benefits closed by settlement or court order are not subject to reopening.

(3) A review of a petition to reopen medical benefits must be conducted by a medical review panel as provided in subsection (4) or, if stipulated by the worker and the insurer, solely by the department's medical director.

(4) The medical review panel must be composed of the department's medical director and two additional physicians who are licensed to practice medicine in Montana and who have expertise and experience in the area of medicine that is relevant to the worker's condition. The department's medical director shall serve as the presiding officer of the medical review panel. Participants on the medical review panel must be reimbursed as provided in 2-18-501 through 2-18-503 if travel is required for a review and must be paid a reasonable fee for services.

(5) A petition for reopening of medical benefits must be filed with the department within 5 years of the termination of medical benefits pursuant to 39-71-704(1)(f). A petition may not be filed more than 90 days before benefits are to terminate.

(6) Upon receipt of a petition to reopen medical benefits, the department shall request from the insurer a copy of the worker's medical records contained in the insurer's claim file. The worker or the insurer may submit additional information that is relevant to the petition to reopen medical benefits.

(7) The proof necessary to support reopening of medical benefits must be a preponderance of the evidence.

(8) Within 60 days of the submission of a petition to reopen medical benefits, the medical review panel or the department's medical director shall issue a report. The report must provide the rationale for the decision reached. A report issued by the medical review panel must be supported by a majority of the panel members. If the report concludes that medical benefits must be reopened, the report must state the extent to which the benefits must be reopened consistent with the utilization and treatment guidelines. Benefits reopened pursuant to this section remain open for 2 years or until maximum medical improvement is achieved following surgery or the recommended medical treatment, whichever occurs first. If the medical panel specifically approves treatment beyond 2 years, medical benefits remain open for as long as recommended by the medical panel. The petitioner and the insurer shall submit updated information to the medical panel every 2 years, and every subsequent 2 years the medical panel shall review the claims that were reopened for longer than 2 years to determine whether to change the previous recommendation.

(9) A party aggrieved by a decision of the department's medical director or medical review panel may, after satisfying the dispute resolution requirements provided in this chapter, file a petition with the workers' compensation court. The report of the department's medical director or the medical review panel is presumed to be correct and may be overcome only by clear and convincing evidence.

Section 30. Transition for stay-at-work/return-to-work assistance fund. (1) The department of labor and industry shall transfer $100,000 from the administration fund provided for by 39-71-201 to the stay-at-work/return-to-work assistance fund established in [section 19] to provide the initial funding for the fund.

(2) Effective for policies written or renewed in state fiscal year 2012 only, the premium surcharge rate to be levied by insurers on workers' compensation insurance premiums pursuant to [section 20] is 0.00082.

Section 31. Codification instruction. (1) [Sections 16 through 21 and 28] are intended to be codified as an integral part of Title 39, chapter 71, part 10, and the provisions of Title 39, chapter 71, part 10, apply to [sections 16 through 21 and 28].

(2) [Section 29] is intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title 39, chapter 71, part 7, apply to [section 29].

Section 32. Saving clause. Except as provided in [section 24], [this act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 33. Severability — nonseverablity. (1) If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

(2) It is the intent of the legislature that [sections 15 through 23] are essentially dependent upon each other and that if one or more of these sections are held invalid or unconstitutional, the other sections specified in this subsection are also invalid.

(3) It is the intent of the legislature that if any one of the amendments made by [section 14] regarding settlement of undisputed medical benefits is held invalid or unconstitutional, the other amendments in [section 14] and [section 35(3)] regarding settlement of undisputed medical benefits are invalid so that settlement of undisputed medical benefits is no longer permitted.

Section 34. Effective date. [This act] is effective on passage and approval.

Section 35. Applicability — retroactive applicability. (1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] apply to injuries occurring on or after July 1, 2012.

Approved April 12, 2011

CHAPTER NO. 168

[HB 508]

AN ACT REVISING COMPENSATION FOR RURAL FIREFIGHTERS; PROVIDING PAYMENT OF A PARTIAL SALARY TO RURAL FIREFIGHTERS WHO ARE INJURED IN THE PERFORMANCE OF THEIR DUTIES; AND LIMITING THE PAYMENT OF THE PARTIAL SALARY TO FULL-PAID EMPLOYEES UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Payment of partial salary to rural firefighter injured in performance of duty. (1) A full-paid firefighter who is an employee of a rural fire district and who is injured in the performance of the firefighter's duty must be paid by the fire district the difference between the firefighter's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing the firefighter's duties as a result of the injury.

(3) This section does not apply to a volunteer firefighter or a part-paid firefighter.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 21, and the provisions of Title 7, chapter 33, part 21, apply to [section 1].

Approved April 12, 2011

CHAPTER NO. 169

[SB 222]

AN ACT REVISING QUALIFICATIONS OF FIREFIGHTERS; AND AMENDING SECTIONS 7-33-4107 AND 7-33-4108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-4107, MCA, is amended to read:

"7-33-4107. Qualifications of firefighters. The state of Montana determines that ~~age is a valid, bona fide occupational qualification for the position of firefighter because of the rigorous physical demands of~~ *qualifications for* the firefighting profession *must recognize the rigorous physical demands placed on firefighters* and the expectation of many years of emergency service. ~~The qualifications of firefighters shall be that they~~ *To qualify as a firefighter, an applicant*:

~~(1) shall not be more than 34 years of age at the time of original appointment;~~

~~(2) shall have passed a physical examination by a practicing physician duly authorized to practice in this state; and~~

~~(3) at the option of said city or town, shall be qualified voters of the city or town~~

(1) must be a citizen of the United States;

(2) must be at least 18 years of age;

(3) must be a high school graduate or have passed the general educational development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(4) must possess or be eligible for a valid Montana driver's license;

(5) shall pass a physical examination by a qualified physician, physician assistant, or advanced practice registered nurse, who is not the applicant's personal physician, physician assistant, or advanced practice registered nurse, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect the applicant's performance of the duties of a firefighter;

(6) must be fingerprinted and a search must be made of the local, state, and national fingerprint files to disclose any criminal record; and

(7) may not have been convicted of a crime for which the applicant could have been imprisoned in a federal or state penitentiary."

Section 2. Section 7-33-4108, MCA, is amended to read:

"7-33-4108. Physical examination. The examination required by 7-33-4107~~(2)~~*(5)* ~~shall~~ *must* be in writing and *a written determination of the examination must be* filed with the city or town clerk. ~~Such~~ *The determination of the* examination ~~shall~~ *must* disclose the ability of ~~such~~ *the* applicant to perform the physical work usually required of firefighters in the performance of their duty."

Approved April 12, 2011

CHAPTER NO. 170

[HB 66]

AN ACT CLARIFYING THAT THE STATE RECORDS COMMITTEE IS ADMINISTERED BY THE SECRETARY OF STATE; PROVIDING THAT THE SECRETARY OF STATE'S REPRESENTATIVE IS THE PRESIDING OFFICER; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 2-6-203 AND 2-15-1013, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-203, MCA, is amended to read:

"2-6-203. Secretary of state's powers and duties — *rulemaking authority.* (1) In order to ~~insure~~ *ensure* the proper management and safeguarding of public records, the secretary of state shall ~~undertake the following~~:

(a) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(b) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(c) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(d) gather and disseminate information on all phases of records management, including current practices, methods, procedures, and devices for the efficient and economical management of records;

(e) operate a central microfilm unit ~~which~~ *that* will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state; ~~and~~

(f) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies*; and*

(g) adopt rules regarding management of public records.

(2) Upon request, the secretary of state shall assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch."

Section 2. Section 2-15-1013, MCA, is amended to read:

"2-15-1013. Records committee — composition and meetings. (1) There is a committee to be known as the state records committee composed of representatives of:

(a) the department of administration;

(b) the legislative auditor;

(c) the attorney general;

(d) the secretary of state; and

(e) the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments ~~shall~~ *must* be submitted in writing to the secretary of state.

(3) The committee shall meet at least quarterly.

(4) Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in

committee activities as provided for in 2-18-501 through 2-18-503. ~~Such expenses shall~~ *Expenses must* be paid from the appropriations made for operation of their respective agencies.

(5) The state records committee is administered by the secretary of state, and the secretary of state's representative serves as the presiding officer for the committee."

Section 3. Directions to code commissioner. Section 2-15-1013 is intended to be renumbered and codified as an integral part of Title 2, chapter 6, part 2.

Approved April 14, 2011

CHAPTER NO. 171

[HB 421]

AN ACT EXPANDING THE RANGE OF ORGANIZATIONS THAT ARE ALLOWED TO ADMINISTER ADULT BASIC EDUCATION PROGRAMS; AND AMENDING SECTIONS 20-7-702 AND 20-7-712, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-702, MCA, is amended to read:

"20-7-702. Authorization to establish adult education ~~program~~ *programs.* The trustees of a district or community college district may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, ~~K-12~~ career and ~~vocational/technical~~ *technical* education, vocational-technical education, American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees."

Section 2. Section 20-7-712, MCA, is amended to read:

"20-7-712. Adult basic education fund and its distribution. (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public instruction for the support of adult basic education programs in any school *district*, community college district, ~~or accredited~~ tribal college*, public library, community-based organization, or a consortium of those organizations* located in Montana.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees *or authorized representative* of any district or tribal college may apply to the superintendent for funds for its adult basic education ~~courses~~ *program*. The financial administration*,* ~~and~~ accounting*, and reporting* of adult basic education funds must ~~be the same as that of adult education~~ *conform to policies established by the office of public instruction*."

Approved April 14, 2011

CHAPTER NO. 172

[HB 480]

AN ACT ALLOWING THE APPOINTMENT OF A JUSTICE OF THE PEACE FOR A JUSTICE'S COURT NOT OF RECORD, ANY ATTORNEY, OR THE

CLERK OF THE JUSTICE'S COURT OF RECORD TO ACT AS A JUDGE PRO TEMPORE IN A JUSTICE'S COURT OF RECORD; AND AMENDING SECTION 3-10-116, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-116, MCA, is amended to read:

"3-10-116. Disqualification of justice of peace for justice's court of record — judge pro tempore. *(1)* When a justice of the peace for a justice's court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court of record, *another justice of the peace for a justice's court not of record,* a municipal court judge, a retired justice of the peace for a justice's court of record, a retired municipal court judge, ~~or~~ an attorney*,* ~~of the county in which the court is located~~ *or the clerk of the justice's court of record* to act as a judge pro tempore.

(2) (a) ~~The~~ *Except as provided in subsection (2)(b), the* judge pro tempore has the same power and authority as the justice of the peace for the justice's court of record.

(b) A clerk of a justice's court of record acting as a judge pro tempore may not preside over a trial but may preside over an initial appearance."

Approved April 14, 2011

CHAPTER NO. 173

[HB 547]

AN ACT PROVIDING INSURANCE COVERAGE FOR ADVANCED PRACTICE REGISTERED NURSES AND REGISTERED NURSE FIRST ASSISTANTS IN A MANNER SIMILAR TO PHYSICIAN ASSISTANTS; INCLUDING REGISTERED NURSE FIRST ASSISTANTS AS PROVIDERS IN HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING THE BOARD OF NURSING TO SPECIFY CRITERIA FOR A REGISTERED NURSE FIRST ASSISTANT; AMENDING SECTIONS 33-22-114, 33-31-102, AND 37-8-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-114, MCA, is amended to read:

"33-22-114. Coverage required for services provided by physician assistants*, advanced practice registered nurses, and registered nurse first assistants*. An insurer, a health service corporation, or any employee health and welfare fund that provides accident or health insurance benefits to residents of this state shall provide, in group and individual insurance contracts, coverage *as well as payment or reimbursement* for health services provided by*:*

(1) a physician assistant as normally covered by contracts for services supplied by a physician if health care services that the physician assistant is approved to perform are covered by the contract*;*

(2) an advanced practice registered nurse, defined in 37-8-102, as normally covered by contracts for services supplied by a physician or a physician assistant if health care services that the advanced practice registered nurse is approved to perform are covered by the contract; and

(3) a registered nurse first assistant, licensed under Title 37, chapter 8, as normally covered by contracts for surgical services supplied by a physician, a physician's assistant, or an advanced practice registered nurse if surgical

services that the registered nurse first assistant is approved to perform are covered by the contract."

Section 2. Section 33-31-102, MCA, is amended to read:

"33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132;

(j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and

(k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Dependent" has the meaning provided in 33-22-140.

(5) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(6) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(7) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(8) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(9) (a) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(b) The term does not apply to a PACE organization that has received a waiver pursuant to 33-31-201.

(10) "Insurance producer" means an individual or business entity appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(11) "PACE organization" means an organization, as defined in 42 CFR 460.6, that is authorized by the centers for medicare and medicaid services and the department of public health and human services to operate a program of all-inclusive care for the elderly.

(12) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(13) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(14) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

(15) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, ~~or~~ advanced practice registered nurse, as specifically listed in 37-8-202*, or registered nurse first assistant as defined by the board of nursing under Title 37, chapter 8*, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(16) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

(17) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

(18) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 3. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization — meetings — powers and duties. (1) The board shall:

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

(i) adopt rules to define criteria for the recognition of registered nurses who are certified through a nationally recognized professional nursing organization as registered nurse first assistants; and

~~(i)~~*(j)* establish a program to assist licensed nurses who are found to be impaired by mental illness, habitual intemperance, or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the renewal fee to be commensurate with the cost of the program.

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications,

responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved April 14, 2011

CHAPTER NO. 174

[HB 566]

AN ACT REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SQUARE THE NUMBER OF POINTS PURCHASED BY AN APPLICANT WHEN CONDUCTING LICENSE AND PERMIT DRAWINGS; AMENDING SECTION 87-1-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

"87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) *(a)* The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

~~(a)~~*(i)* giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

~~(b)~~*(ii)* giving a qualifying landowner a preference in drawings. As used in this subsection ~~(5)(b)~~ *(5)(a)*, "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(b) The commission shall square the number of points purchased by an applicant per species when conducting drawings for licenses and permits.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."

Section 2. Effective date. [This act] is effective March 1, 2012.

Approved April 14, 2011

CHAPTER NO. 175

[SB 74]

AN ACT CONFORMING CERTAIN TERMS REGARDING THE FINANCIAL STATUS OF COMMODITY DEALERS AND COMMODITY WAREHOUSE OPERATORS TO TERMS USED IN GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REVISING AND CLARIFYING THE LICENSING REQUIREMENTS FOR COMMODITY DEALERS; ALLOWING FOR FULL OR 110% BONDING BY A COMMODITY DEALER OF COMMODITIES PURCHASED ON CONTRACT; AMENDING SECTIONS 80-4-402, 80-4-405, 80-4-421, 80-4-502, 80-4-505, 80-4-506, 80-4-601, AND 80-4-604, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-402, MCA, is amended to read:

"80-4-402. Definitions. As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means a person who contracts for or solicits any agricultural commodities from a producer or warehouse operator or negotiates the consignment or purchase of any agricultural commodity on behalf of a commodity dealer.

(2) "Agricultural commodity" means any grain, oil seed crops, seed, or other crops designated by rule of the department.

(3) "Bailment" means the transfer, by written or verbal contract, of an agricultural commodity by an owner of a commodity to a producer for the purpose of obtaining the producer's services in planting, growing, harvesting, or delivering back to the owner the agricultural commodity. The term includes any one or all of the enumerated transactions, whether title passes or not.

(4) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(5) (a) "Commodity dealer" means a person who engages in a business involving or, as part of the business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, bailment, or transfer of any agricultural commodity in the state of Montana.

(b) The term does not include:

(i) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(ii) a person who buys agricultural commodities from a licensed commodity dealer;

(iii) a person who does not purchase more than $30,000 worth of agricultural commodities from producers during a licensing year; however, once a person exceeds the $30,000 exemption, the person shall obtain a license and is not eligible for the exemption for the succeeding year;

(iv) a person who is the producer of agricultural commodities that the person actually plants, nurtures, and harvests;

(v) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange; or

(vi) a person who buys agricultural commodities used exclusively for the feeding of livestock ~~and not for resale~~.

(6) "Delayed payment contract" means a written contract for the sale of an agricultural commodity when the purchase price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does not include those contracts in which the parties intend payment to be made immediately upon determination of weights and grades.

(7) "Department" means the department of agriculture provided for in 2-15-3001.

(8) "Depositor" means a person who delivers an agricultural commodity to a commodity dealer for sale, who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment, who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural commodity.

(9) "Director" means the director of the department of agriculture.

(10) "Equity" means the residual interest in the assets of a person that remains after deducting the liabilities of the person under generally accepted accounting principles.

~~(10)~~*(11)* "FGIS" means the federal grain inspection service, a program administered by the federal grain inspection, packers, and stockyards administration (GIPSA).

~~(11)~~*(12)* "Grain" means all grains for which standards have been established under the Grain Standards Act and all other agricultural commodities, such as mustard, oil seed crops, or other crops, that may be designated by rule of the department.

~~(12)~~*(13)* "Grain standards" means the official standards of quality and condition of grain that establish the grades defined by the Grain Standards Act or those standards adopted by department rule.

~~(13)~~*(14)* "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through 87.

~~(14)~~*(15)* "Inspector" means a person designated by the director to assist in the administration of parts 4 through 7 of this chapter. The term includes warehouse auditors or examiners.

~~(15)~~*(16)* "Official agricultural commodity inspectors" means official personnel who perform or supervise the performance of official inspection services and certify the results of inspections, including the grade of agricultural commodities.

~~(16)~~*(17)* "Official agricultural commodity samplers" or "samplers" means official personnel who perform or supervise the performance of official sampling services and certify the results of the sampling.

~~(17)~~*(18)* "Official agricultural commodity weighers" means official personnel who perform or supervise the performance of class X or class Y weighing services

and certify the results of the services, including the weight of the agricultural commodity.

~~(18)~~*(19)* "Person" means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

~~(19)~~*(20)* "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

~~(20)~~*(21)* "Public warehouse" or "warehouse" means an elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities that commingle commodities belonging to different lots of agricultural commodities.

~~(21)~~*(22)* "Purchase contract" means a delayed payment contract or other written contract for the purchase of agricultural commodities by a commodity dealer.

~~(22)~~*(23)* "Purchase price" means the final price after premiums and discounts are assessed.

~~(23)~~*(24)* "Receipt" means a warehouse receipt.

~~(24)~~*(25)* "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

~~(25)~~*(26)* "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

~~(26)~~*(27)* "Subterminal warehouse" means a warehouse where an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

~~(27)~~*(28)* "Terminal grain warehouse" means a warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

~~(28)~~*(29)* "Warehouse operator" means a person operating or controlling a public warehouse.

~~(29)~~*(30)* "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouse operator, except scale weight tickets.

(31) "Working capital" means the excess of current assets over current liabilities under generally accepted accounting principles."

Section 2. Section 80-4-405, MCA, is amended to read:

"80-4-405. Maximum bond amount. The maximum amount of any public warehouse operator bond may not exceed $1 million and the maximum amount of a commodity dealer bond may not exceed $1 million, except:

(1) any bonds compensating for ~~net asset~~ *equity or working capital* deficiencies prescribed in parts 5 and 6 of this chapter must be added to the maximum bond amount. ~~In the event that~~ *If* the public warehouse operator is also licensed as a commodity dealer, only one ~~net asset deficiency~~ *bond* amount is required.

(2) the maximum bond amount must be adjusted each year based upon the percentage increase or decrease in the annual average index of prices received

by Montana farmers for food and feed grains as computed by the Montana crop and livestock reporting service."

Section 3. Section 80-4-421, MCA, is amended to read:

"80-4-421. License suspension and revocation — renewal. (1) The department may revoke, suspend, or modify a commodity warehouse operator's or commodity dealer's license when it has reasonable cause to believe that the licensee has committed any of the following acts, each of which is a violation of parts 4 through 7 of this chapter:

(a) failure to maintain all initial licensing requirements, including insurance, bonding, ~~and net asset~~ *equity, and working capital* requirements. In determining compliance with ~~net asset~~ *equity and working capital* requirements, the department may consider the licensee's status under any prior or current bankruptcy proceedings, as well as any outstanding civil settlements or judgments.

(b) aiding or abetting another person in the violation of the licensure or any other provisions of parts 4 through 7 of this chapter;

(c) conviction of any criminal offense defined under Title 45, after considering Title 37, chapter 1, part 2;

(d) failure or refusal to allow inspection or maintain and provide records, reports, and other information required by the department;

(e) failure or refusal to post storage and other charges as filed with the department;

(f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;

(g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-525 and 80-4-527;

(h) failure of a warehouse operator to maintain and deliver upon request sufficient agricultural commodities to cover outstanding warehouse receipts as required under 80-4-531;

(i) discrimination in charges by a warehouse operator as provided in 80-4-524;

(j) failure to provide payment for any agricultural commodity;

(k) failure to satisfy a judgment entered as a result of a violation of this chapter;

(l) violation of or failure or refusal to comply with any other provision of parts 4 through 7 of this chapter or any rule adopted by the department pursuant to parts 4 through 7; or

(m) failure to assess, report, or pay an assessment authorized and required pursuant to Title 80, chapter 4 or 11.

(2) The department may refuse to issue or renew a license if the applicant or licensee:

(a) has a license as a warehouse operator or commodity dealer that was previously or is currently suspended or revoked. In determining the sufficiency of cause, the department shall consider the nature and length of the action and any subsequent licensure or other evidence of rehabilitation.

(b) does not satisfy the bonding, insurance, ~~or net asset~~ *equity, or working capital* requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant that the department subsequently determines incorrect is void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631."

Section 4. Section 80-4-502, MCA, is amended to read:

"80-4-502. Licenses to warehouse operator — issuance — renewal — conditions precedent. (1) The department is authorized to issue or renew, upon application, a license to any warehouse operator for the conduct of a warehouse or warehouses in accordance with parts 5 and 6 of this chapter, provided the following conditions are met:

(a) Each applicant shall file and maintain satisfactory evidence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that are stored in the warehouse, including agricultural commodities owned by the warehouse operator. The insurance ~~shall~~ *must* insure the commodities for the full market value at the time of loss of ~~such~~ *the* commodities against loss by fire, internal explosion, lightning, or tornado.

(b) Each warehouse must be found suitable for the proper storage of the particular agricultural commodity stored ~~therein~~ *in the warehouse*.

(c) A license fee must be submitted to the department as prescribed by 80-4-503.

(d) A current drawing of the warehouse, showing storage facilities and capacity of the warehouse, must be submitted to the department.

(e) A sufficient and valid bond must be filed and maintained as required by 80-4-504 and 80-4-505.

(f) *(i)* ~~The~~ *Except as provided in subsection (1)(f)(ii), the* applicant has submitted to the department a current financial statement prepared by a licensed accountant according to generally accepted accounting principles, showing that the applicant has and ~~does maintain current assets equal to or greater than current liabilities~~ *maintains positive working capital*. ~~Applicants not having adequate current assets equal to or greater than current liabilities~~

(ii) An applicant without positive working capital may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of $2,000 for each $1,000 of deficit. The bond or equivalent ~~must be~~ *required in this subsection (1)(f)(ii) is* in addition to the bond amount required in 80-4-505.

(g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department for approval and filing.

(h) The applicant must have complied with the terms of this part and the rules prescribed thereunder.

(2) All documents required for renewal of a license must be received by the department prior to the expiration date of the warehouse license. An expired warehouse license may be reinstated by the department upon receipt of all required licensing documents and a penalty fee of $50 if the documents are filed

within 30 days from the date of expiration of the warehouse license. All license applications received after the 30-day penalty period must be considered original applications and an initial license fee must be assessed according to 80-4-503."

Section 5. Section 80-4-505, MCA, is amended to read:

"80-4-505. Amount of bond — cancellation. (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than $20,000 or more than the maximum prescribed in 80-4-405. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouse operator is also operating as a commodity dealer, the warehouse operator shall also provide a bond as prescribed in 80-4-604.

(3) If ~~there occurs~~ a deficiency *occurs* in ~~net assets as~~ *the equity* required under 80-4-506, there ~~shall~~ *must* be added to the amount of bond determined in accordance with subsection (1) an amount equal to that deficiency.

(4) Each warehouse operator bond ~~shall run~~ *runs* continuously with the license until canceled by the bonding company.

(5) A 60-day written notice must be given to the department by the bonding company before any bond is canceled; however, the cancellation does not terminate any liability of the surety incurred prior to the date of cancellation."

Section 6. Section 80-4-506, MCA, is amended to read:

"80-4-506. ~~Net asset~~ *Equity* requirements. (1) Each licensee or applicant for a license shall maintain, above all exemptions and liabilities, total ~~net assets~~ *equity* liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural commodities that the licensee's or applicant's warehouse or warehouses can accommodate.

(2) A person may not be licensed as a warehouse operator unless the person has and maintains allowable ~~net assets~~ *positive equity* ~~of at least $10,000~~.

(3) Assets must be valued at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

(4) In determining total ~~net assets~~ *equity*, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that the property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(5) If a warehouse operator is licensed or applies for licenses to operate two or more warehouses, the maximum number of hundredweight that all warehouses will accommodate must be considered in determining whether the warehouse operator meets the ~~net asset~~ *equity* requirements specified in this section."

Section 7. Section 80-4-601, MCA, is amended to read:

"80-4-601. Commodity dealer license requirements — financial responsibility. (1) A person may not engage in the business of a commodity

dealer in this state without first having obtained a license issued by the department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3) *(a)* A license application must include the following:

~~(a)~~*(i)* the name of the applicant;

~~(b)~~*(ii)* the names of the officers and directors if the applicant is a corporation;

~~(c)~~*(iii)* the names of the partners if the applicant is a partnership;

~~(d)~~*(iv)* the location of the principal places of business;

~~(e)~~*(v)* a sufficient and valid bond as specified in 80-4-604*, plus the bond specified in subsection (5)(a)(i) or (5)(a)(ii) if applicable, or as specified in subsection (5)(a)(iii)*;

~~(f) the number and description of trucks or tractor-trailer units owned or leased by the applicant that will be used in the transportation of agricultural commodities purchased pursuant to the provisions of this part;~~

~~(g)~~*(vi)* a complete financial statement prepared by a licensed accountant according to generally accepted accounting principles, setting forth the applicant's assets, liabilities, and ~~net worth~~ equity; and~~. The commodity dealer shall have and maintain current assets equal to or greater than current liabilities. Applicants not having adequate current assets equal to or greater than current liabilities may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of $2,000 for each $1,000 of deficit. The bond or equivalent must be in addition to the bond amount required in 80-4-604.~~

~~(h)~~*(vii)* any other reasonable information the department finds necessary to carry out the provisions and purpose of this part.

(b) In determining the value of assets for the purposes of commodity dealer licensing:

(i) the value of the assets must be shown at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal; and

(ii) credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that the insurable property is protected against loss or damage by fire by insurance in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(4) ~~In~~ *Except as provided in subsection (5), in* order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain ~~net assets of at least $50,000 or maintain a bond in the amount of $2,000 for each $1,000 or fraction thereof of net assets deficiency. However, a minimum of $10,000 net assets is required by a commodity dealer to qualify for a license. Assets must be shown at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal. In determining total net assets, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in~~

~~this state. A bond submitted for purposes of this subsection is in addition to any bond otherwise required under this part.~~*:*

(a) equity of $50,000;

(b) positive working capital; and

(c) the bond required under 80-4-604.

(5) (a) An applicant for a commodity dealer's license:

(i) that meets the condition specified in subsection (4)(c) and has maintained positive equity but does not meet the condition specified in subsection (4)(a) shall provide the department with additional bonding in the amount of $2,000 for each $1,000 or fraction of $1,000 that the applicant's equity is less than $50,000; and

(ii) that meets the condition specified in subsection (4)(c) but does not meet the condition specified in subsection (4)(b) shall provide the department with additional bonding in the amount of $2,000 for each $1,000 or fraction of $1,000 that the applicant's current liabilities exceed the applicant's current assets; or

(iii) that cannot or chooses not to meet the requirements of subsections (4)(a), (4)(b), and (4)(c) may, at the applicant's discretion and with the consent of the department, provide the department with a bond in the amount of 110% of the value of commodities the applicant or dealer intends to purchase during the term of the license or 110% of the value of commodities the dealer purchased during the preceding 12 months, whichever is greater. The minimum bond is $20,000.

(b) An applicant or commodity dealer that provides a bond under subsection (5)(a)(iii) is exempt from the bonding requirement in 80-4-604(2).

(c) If a commodity dealer posts a bond or equivalent under subsection (5)(a)(iii) and at any time has unpaid contracts that exceed 90% of the dealer's bond or equivalent, the dealer shall either pay off contracts of sufficient value or increase the bond amount so that the total value of the unpaid contracts is less than 90% of the bond or equivalent.

~~(5)~~*(6)* The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them."

Section 8. Section 80-4-604, MCA, is amended to read:

"80-4-604. Bonding requirement amounts — cancellation. (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its equivalent, as established by department rule, payable to the state.

(2) ~~The~~ *Except as provided in 80-4-601(5)(b):*

(a) the bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer during the previous 12-month period~~. The~~*;*

(b) the bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period~~. The~~*; and*

(c) the minimum amount of bond required by any commodity dealer is $20,000~~,~~ and the maximum is prescribed in 80-4-405.

(3) A surety shall notify the commodity dealer and the department by certified mail at least 60 days prior to the cancellation of the bond. A commodity dealer's bond filed with the department is continuous until canceled by the

surety upon 60 days' notice; however, cancellation does not terminate any liability of the surety incurred prior to the date of cancellation."

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved April 14, 2011

CHAPTER NO. 176

[SB 76]

AN ACT PROVIDING FOR PAROLE ELIGIBILITY FOR PERSONS SENTENCED TO THE CUSTODY OF THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND CONFINED IN CERTAIN STATE FACILITIES; AND AMENDING SECTION 46-23-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole. (1) Subject to the restrictions contained in subsections (2) through (5) *and when in the board's opinion there is reasonable probability that a prisoner can be released without detriment to the prisoner or to the community*, the board may release on nonmedical parole by appropriate order any person who is*:*

(a) confined in a state prison ~~or the state hospital or any person who is~~*;*

(b) sentenced to the state prison and confined in a prerelease center ~~when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community~~*; or*

(c) sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312 and confined in the Montana state hospital, the Montana developmental center, or the Montana mental health nursing care center.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be paroled.

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."

Approved April 14, 2011

CHAPTER NO. 177

[SB 91]

AN ACT REVISING POSTAL SERVICE REQUIREMENTS FOR PROPOSED CITIES AND TOWNS; AMENDING SECTION 7-2-4101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4101, MCA, is amended to read:

"7-2-4101. Petition to organize city or town. (1) Whenever the inhabitants of any part of a county desire to organize as a city or town, the inhabitants may apply by petition, signed by not less than 300 registered electors or two-thirds of the registered electors, whichever is less, who are residents of the state and residing within the limits of the proposed city or town, to the board of county commissioners of the county in which the proposed area is situated.

(2) (a) The petition must describe the limits of the proposed city or town and wards of the proposed city or town. A proposed ward must contain 50 or more registered electors and must have at least 200 inhabitants for each square mile of land area.

(b) The proposed city or town must contain a post office, *contract postal unit, or other similar unit operated by or under contract with the United States postal service* within the proposed area of the city or town.

(c) The petitioners shall attach to the petition a map of the proposed area to be incorporated and state the name of the proposed city or town.

(3) The petition and map must be filed in the office of the election administrator."

Section 2. Contingent voidness. If [LC 1283] is not passed and approved, then [this act] is void.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 14, 2011

CHAPTER NO. 178

[SB 115]

AN ACT PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM DISCLOSING INFORMATION THAT IDENTIFIES ANY PERSON WHO HAS LAWFULLY TAKEN A LARGE PREDATOR DURING A HUNT WITHOUT THE WRITTEN CONSENT OF THE PERSON AFFECTED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disclosure of information — legislative finding — large predators. (1) Except for information that is required by law to be reported to state or federal officials, the department may not disclose any information that identifies any person who has lawfully taken a large predator as defined in 87-1-217 during a hunt without the written consent of the person affected. Information that may not be disclosed includes but is not limited to a person's name, address, phone number, date of birth, social security number, and driver's license number.

(2) The legislature finds that the prohibition on disclosure of information pursuant to subsection (1) is necessary to protect an individual's privacy, safety, and welfare.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, and the provisions of Title 87, chapter 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 14, 2011

CHAPTER NO. 179

[SB 118]

AN ACT CLARIFYING THAT OUTFITTERS MAY CONTRACT FOR EQUIPMENT TO MEET LICENSING REQUIREMENTS; AMENDING SECTIONS 37-47-302 AND 37-47-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-302, MCA, is amended to read:

"37-47-302. Outfitter's qualifications. An applicant for an outfitter's license or renewal of a license must meet the following qualifications:

(1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule;

(2) own*,* ~~or~~ hold under written lease*, or contract for* or represent a company, corporation, or partnership who owns*,* ~~or~~ holds under written lease*, or contracts for* the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent); and

(3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem."

Section 2. Section 37-47-304, MCA, is amended to read:

"37-47-304. Application. (1) Each applicant for an outfitter's, guide's, or professional guide's license shall apply for a license on a form furnished by the department.

(2) The application for an outfitter's license forms the basis for the outfitter's operations plan and must include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of the applicant's principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including:

(i) years of experience as an outfitter, guide, or professional guide;

(ii) the applicant's knowledge of areas in which the applicant has operated and intends to operate; and

(iii) the applicant's ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional guide is to be employed by the outfitter and

stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned, ~~or~~ leased, *or contracted for* by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of participants to be accompanied at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant intends to provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule.

(3) An application for an outfitter's license must be in the name of an individual person only. An application involving corporations, proprietorships, or partnerships must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. Any revocation or suspension of a license is binding upon the individual person and the corporation, proprietorship, or partnership for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 14, 2011

CHAPTER NO. 180

[HB 187]

AN ACT REQUIRING THE TRANSPORTATION COMMISSION AND COUNTIES TO USE MONTANA-MADE WOODEN PRODUCTS IN CERTAIN ROAD AND BRIDGE CONSTRUCTION OR RECONSTRUCTION PROJECTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Use of Montana-made wooden materials in county road projects. When the board of county commissioners authorizes a construction or reconstruction project on a county road, it shall require the use of Montana-made wooden guardrail posts, fenceposts, and signposts when appropriate and when the cost of wooden materials is less than or equal to the cost of other materials.

Section 2. Use of Montana-made wooden materials in wooden county bridge projects. When the board of county commissioners authorizes

a construction or reconstruction project for a wooden county bridge, it shall require the use of Montana-made wooden decking, guardrail posts, fenceposts, and signposts when appropriate and when the cost of wooden materials is less than or equal to the cost of other materials.

Section 3. Use of Montana-made wooden materials in highway and road projects. Unless prohibited by federal law, all contracts let by the commission for the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125, including portions in cities and towns and all contracts entered into under 7-14-4108, must use Montana-made wooden guardrail posts, fenceposts, signposts, and decking when appropriate and when the cost of wooden materials is less than or equal to the cost of other materials.

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 14, part 21, and the provisions of Title 7, chapter 14, part 21, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 14, part 24, and the provisions of Title 7, chapter 14, part 24, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 3].

Approved April 15, 2011

CHAPTER NO. 181

[HB 195]

AN ACT REQUIRING THAT A DRIVER'S LICENSE CONTAIN THE LICENSEE'S RESIDENCE ADDRESS UNLESS THE LICENSEE REQUESTS USE OF THE MAILING ADDRESS; AND AMENDING SECTION 61-5-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's license receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(b) The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver's license renewal services.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, ~~Montana mailing address~~ *Montana residence address unless the licensee requests use of the mailing address*, and a brief description of the licensee; and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and road or skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) Except as provided in subsections (3)(d)(iv) through (3)(d)(vi), a person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license. A person may not renew by mail for a subsequent license term after a mail renewal, except that a spouse or dependent of a person stationed outside Montana on active military duty may renew a driver's license by mail for one additional consecutive term following a mail renewal.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail is 8 years.

(v) The department may not renew a license by mail if:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant; or

(B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572.

(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. Except as provided in 61-3-119 and 61-5-115, the department shall mail the notice to the Montana mailing address shown on the driver's license.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(e) A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.

(5) When the department issues a driver's license to a person under 18 years of age, the license must be clearly marked with a notation that conveys the restrictions imposed under 61-5-133.

(6) (a) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

(i) driver's license, except a commercial driver's license — $5 a year or fraction of a year;

(ii) motorcycle endorsement — 50 cents a year or fraction of a year;

(iii) commercial driver's license:

(A) interstate — $10 a year or fraction of a year; or

(B) intrastate — $8.50 a year or fraction of a year.

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents."

Approved April 15, 2011

CHAPTER NO. 182

[HB 330]

AN ACT REQUIRING VOTER REGISTRATION FORMS TO BE STANDARDIZED AND TO PROVIDE AN OPTION FOR REQUESTING TO BE PLACED ON THE ABSENTEE BALLOT LIST TO RECEIVE ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 13-2-110, 13-13-212, AND 13-21-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Standard application form for voter registration and absentee ballot requests. (1) The secretary of state shall establish by rule a standard application form, to be used by each election administrator, that allows an individual to apply for voter registration and to request to be added to the absentee ballot list in order to receive ballots for subsequent elections.

(2) Pursuant to 13-13-212(4), the absentee ballot application portion of the standard form must include substantially the following language and options:

Optional: I request an absentee ballot to be mailed to me for as long as I reside at the address listed:

☐ for each subsequent election in which I am eligible to vote; or

☐ for each subsequent federal election in which I am eligible to vote.

I understand that in order to continue to receive an absentee ballot, I must complete, sign, and return a confirmation form that will be mailed to me in January of each year.

Section 2. Section 13-2-110, MCA, is amended to read:

"13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes. (1) An individual may apply for voter registration in person or by mail by completing and signing ~~an~~ *the standard* application *form* for voter registration *provided for in [section 1]* and providing the application to the election administrator in the county in which the elector resides.

(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed.

(3) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(4) Except as provided in subsection (5):

(a) an applicant for voter registration shall provide the applicant's driver's license number; or

(b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(5) (a) If an applicant does not have a driver's license or social security number, the applicant shall provide as an alternative form of identification:

(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) The alternative form of identification must be:

(i) an original version presented to the election administrator if the applicant is applying in person; or

(ii) a copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.

(6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's identity or eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law."

Section 3. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a ~~standardized~~ *standard application* form provided by rule by the secretary of state *pursuant to [section 1]* or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application. *The request may be made when the individual applies for voter registration using the standard application form provided for in [section 1].*

(b) The election administrator shall mail a forwardable address confirmation form in January of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 4. Section 13-21-210, MCA, is amended to read:

"13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature; ~~or~~

(ii) by properly completing, signing, and returning to the election administrator the federal post card application*; or*

(iii) by submitting to the election administrator the standard application form provided for in [section 1] when registering to vote.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in 13-2-304 for late registration.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an elector fails to provide the address confirmation required by 13-13-212, the elector will be removed from the ~~permanent~~ absentee ballot list. An elector who is removed from the ~~permanent~~ absentee ballot list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.

(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 1, part 2, and the provisions of Title 13, chapter 1, part 2, apply to [section 1].

Approved April 15, 2011

CHAPTER NO. 183

[HB 339]

AN ACT ELIMINATING THE LIMIT ON THE NUMBER OF CLASS B-13 NONRESIDENT YOUTH BIG GAME COMBINATION LICENSES THAT MAY BE SOLD; AMENDING SECTION 87-2-522, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-522, MCA, is amended to read:

"87-2-522. Class B-13—nonresident youth big game combination license. (1) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, and who is 12 years of age or older or will turn 12 years old before or during the season for which the license is issued and who is under 18 years of age may, upon payment of a fee of one-half the cost of a regularly priced Class B-10 nonresident big game combination license, plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office in Helena, Montana, to purchase a Class B-13 nonresident youth big game combination license.

(2) The holder of a Class B-13 license is entitled to all the privileges of a Class B license, a Class B-1 license, a Class B-7 license, an elk tag, and a nonresident wildlife conservation license. When using a Class B-13 license, the holder must be accompanied by an adult immediate family member who is the holder of a valid nonresident Class B-10 or Class B-11 combination license or who is the holder of a valid resident deer or elk tag. As used in this subsection, an adult immediate family member means an applicant's natural or adoptive parent, grandparent, brother, or sister who is 18 years of age or older.

(3) ~~Not more than 300 Class B-13 licenses are authorized for sale each license year.~~ Class B-13 licenses are not included in the limit on the number of available Class B-10 nonresident big game combination licenses issued pursuant to 87-2-505.

(4) The holder of a valid Class B-13 license may apply for a Class B-12 nonresident elk B tag license when authorized by the commission pursuant to 87-2-104. The fee for a Class B-12 license is $270. The license entitles the holder to hunt in the hunting district or portion of a hunting district and under the terms and conditions specified by the commission."

Section 2. Effective date. [This act] is effective March 1, 2012.

Approved April 15, 2011

CHAPTER NO. 184

[HB 479]

AN ACT GRANTING THE BOARD OF OIL AND GAS CONSERVATION RULEMAKING AUTHORITY TO REGULATE AS INJECTION WELLS INJECTIONS TO RESTORE OR ENHANCE THE MICROBIAL CONVERSION OF HYDROCARBON SUBSTRATES TO METHANE GAS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rulemaking — microbial conversion wells. The board may adopt rules necessary to regulate well injections to restore or enhance the microbial conversion of hydrocarbon substrates to methane gas as class II injection wells.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2011

CHAPTER NO. 185

[HB 491]

AN ACT AUTHORIZING PUBLIC PROCUREMENT UNITS TO PURCHASE COOPERATIVELY FROM CERTAIN COOPERATIVE ENTITIES; AMENDING SECTION 18-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-402, MCA, is amended to read:

"18-4-402. Cooperative purchasing authorized. The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants independent of the requirements of part 3. Cooperative purchasing may include purchasing through federal supply schedules of the United States general services administration, joint or multiparty contracts between public procurement units, ~~and~~ open-ended state public procurement unit contracts that are made available to local public procurement units*, and competitive contracts established by for-profit, not-for-profit, or nonprofit cooperative entities*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2011

CHAPTER NO. 186

[HB 575]

AN ACT GENERALLY REVISING ANNEXATION LAWS; ALLOWING ANNEXATION OF CERTAIN PARCELS IF ALL OWNERS OF PROPERTY TO BE ANNEXED AGREE; PROVIDING FOR COORDINATION AND CONSULTATION WITH THE COUNTY OR COUNTIES IN WHICH THE

MUNICIPALITY RESIDES FOR PURPOSES OF TRANSFERRING SERVICES; PROVIDING A PROCESS FOR THE TRANSFER OF FIRE PROTECTION SERVICES FROM A RURAL FIRE DISTRICT; ELIMINATING THE RESTRICTION ON ANNEXATION OF LANDS WITHIN RURAL FIRE DISTRICTS THAT HAVE BEEN ESTABLISHED FOR MORE THAN 10 YEARS; PROVIDING THAT A COUNTY MAY PETITION A COURT TO REVIEW THE ANNEXATION PROCEDURES OF A MUNICIPALITY; AMENDING SECTIONS 7-2-4601, 7-2-4606, 7-2-4608, 7-2-4705, 7-2-4731, 7-2-4732, 7-2-4734, AND 7-2-4741, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4601, MCA, is amended to read:

"7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town may be altered and new areas annexed as provided in this part.

(2) The council or other legislative body of a municipal corporation, upon receiving a written petition for annexation containing a description of the area to be annexed and signed by not less than 33 1/3% of the registered electors of the area proposed to be annexed, shall without delay submit to the electors of the municipal corporation and to the registered electors residing in the area proposed by the petition to be annexed the question of whether the area should be made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received a written petition containing a description of the area requested to be annexed and signed by:

(i) more than 50% of the resident electors owning real property in the area to be annexed; or

(ii) the owner or owners of ~~50% of the~~ real property ~~in the~~ *representing 50% or more of the total* area to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) ~~upon~~ *on* its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation."

Section 2. Section 7-2-4606, MCA, is amended to read:

"7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days of the election, pass and adopt a resolution providing for the annexation.

(b) The resolution must state that a petition has been filed with the council or other legislative body with the signatures of 33 1/3% of the resident electors owning real property in the area proposed to be annexed; a description of the boundaries of the area to be annexed; a copy of the resolution ordering a general or special election; a copy of the notice of the election; the time and result of the canvass of the votes received in favor of annexation and the number of votes cast against annexation; and that the boundaries of the city or town will be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident electors owning real property or the owners of

real property representing 50% *or more* of the *total* area to be annexed; a description of the boundaries of the area to be annexed; and a statement that the boundaries of the municipality are to be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607."

Section 3. Section 7-2-4608, MCA, is amended to read:

"7-2-4608. Restrictions on annexation power. (1) ~~No territory which,~~ *Territory that is part of an incorporated city or town* at the time ~~such~~ *a* petition for ~~such~~ proposed annexation is presented ~~to such council or legislative body, forms any part of any incorporated city or town shall~~ *as provided in 7-2-4601 may not* be annexed under the provisions of this part.

(2) ~~No~~ *Except as provided in subsection (3), a* parcel of land ~~which~~ *that*, at the time ~~such~~ *a* petition for ~~such~~ proposed annexation is presented to ~~such council or legislative~~ *the governing* body *of a city or town*, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or *for* any purpose incident ~~thereto shall~~ *to those uses may not* be annexed under the provisions of this part.

(3) The provisions of subsection (2) do not apply if the petition submitted to the governing body of the city or town is signed by 100% of the owners of the land proposed to be annexed and the annexation is in accordance with the city's or town's adopted growth policy."

Section 4. Section 7-2-4705, MCA, is amended to read:

"7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of the municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the owners of real property situated outside the corporate boundaries of any municipality, but contiguous to the municipality, desire to have real estate annexed to the municipality, they shall file with the governing body of the municipality a petition bearing the signatures of 51% of the real property owners of the area sought to be annexed and requesting a resolution stating that the municipality intends to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731~~(2)~~*(3)*."

Section 5. Section 7-2-4731, MCA, is amended to read:

"7-2-4731. Plans and report on extension of services required — *consultation with county.* (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to ~~such~~ *the* area *proposed to be annexed*. ~~This~~ *The* report ~~shall~~ *must* include:

(a) a map or maps of the municipality and adjacent territory to show the following information:

(i) the present and proposed boundaries of the municipality;

(ii) the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of ~~such~~ *the* streets and utility lines as required in subsection (1)(c); and

(iii) the general land use pattern in the areas to be annexed;

(b) a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(2) Prior to making plans for the extension of services pursuant to subsection (1), the municipality shall provide notice of its decision to exercise its authority under this part to the county. If requested by the county, the municipality shall consult with the county governing body or its representatives to coordinate the orderly transfer of services.

~~(2)~~*(3)* At least 14 days before the date of the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body *of the municipality* shall approve the report and ~~shall~~ make ~~it~~ *the report* available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution."

Section 6. Section 7-2-4732, MCA, is amended to read:

"7-2-4732. Contents of plan for extension of services. (1) ~~Specifically,~~ ~~the~~ *The* plans for the extension of services ~~shall~~ *must* provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services~~,~~ *and* develop and add sections to the city.

(2) The plans ~~shall~~ *must*:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as ~~such~~ *those* services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and ~~of~~ major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when ~~such~~ *the* streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure ~~such~~ *the* services, according to the policies in effect in ~~such~~ *the* municipality for extending ~~such~~ *the* services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of ~~such~~ *the* streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and ~~no~~ capital improvements are *not* needed to provide adequate services stipulated by this section and 7-2-4731, the municipality ~~must~~ *shall* provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

(5) If a county, special district, or improvement district currently provides services to the area to be annexed, the plan must provide specific steps for the orderly transfer of those services, including police protection, fire protection,

garbage collection, street and street maintenance services, and utility services. The plan for the transfer of services must be developed in consultation with the governing body of the county and with any other departments of the county, special districts, or improvement districts that have been providing services to the area proposed to be annexed."

Section 7. Section 7-2-4734, MCA, is amended to read:

"7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area that meets the following standards:

(1) The area must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) The area must be included within and the proposed annexation must conform to a growth policy adopted pursuant to Title 76, chapter 1.

~~(4) No part of the area may be included within the boundary, as existing at the inception of the attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127.~~

(4) (a) If fire protection services in the area to be annexed have been provided by a fire district organized under Title 7, chapter 33, part 21, the plan must include provisions for coordinating the transfer of fire protection services to the municipality and compensating the district, if necessary, for equipment and district expenses.

(b) Upon transfer of fire protection services, the existing boundaries of a rural fire district may be altered or the fire district may be dissolved as provided in 7-33-2401."

Section 8. Section 7-2-4741, MCA, is amended to read:

"7-2-4741. Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, *a petition seeking review of the annexation procedures of the governing body of the municipality may be filed in the district court in which the municipality is located by:*

(a) either a majority of the real property owners of the area to be annexed or the owners of more than 75% in assessed valuation of the real estate in the area who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as applied to their property~~, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing body.~~*; and*

(b) the county from which the land is being annexed.

(2) If two or more petitions for review are submitted to the court, the court may consolidate the petitions for review at a single hearing."

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2011

CHAPTER NO. 187

[SB 3]

AN ACT REQUIRING STATE AGENCIES AND THE MONTANA UNIVERSITY SYSTEM TO BIENNIALLY REPORT TO THE PRESERVATION REVIEW BOARD ON THE STATUS AND MAINTENANCE NEEDS OF AGENCY HERITAGE PROPERTIES; REQUIRING THE STATE HISTORIC PRESERVATION OFFICER TO REPORT THE INFORMATION TO THE LEGISLATURE; AND AMENDING SECTIONS 22-3-422, 22-3-423, AND 22-3-424, MCA.

WHEREAS, hundreds of heritage properties have been entrusted to the state of Montana, and the state's agencies are responsible for maintaining those properties on behalf of the state's citizens; and

WHEREAS, these properties are in danger of disappearing or falling into a state of disrepair from which they may never recover; and

WHEREAS, preserving and maintaining heritage properties is important not only for fostering a sense of identity and community, but also for the economic benefits to be realized through reusing buildings, attracting tourism, and revitalizing downtown areas; and

WHEREAS, regular assessment by state agencies on the condition of the heritage properties under the agencies' care will help ensure the state's ongoing stewardship of these valuable resources.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-422, MCA, is amended to read:

"22-3-422. Duties of preservation review board. The preservation review board shall:

(1) recommend nominations to the register;

(2) approve or disapprove all nominations to the register;

(3) approve or disapprove additions to statewide inventories of heritage properties;

(4) review the annual work program that recommends preservation goals and grant allocations for the next succeeding fiscal year; ~~and~~

(5) act in an advisory capacity to the historic preservation office and to state agencies*; and*

(6) accept reports from state agencies and the Montana university system on the first Tuesday in February of every even-numbered year on the status and stewardship of the agencies' and the university system's heritage properties as required in 22-3-424 and make recommendations regarding management of the properties.~~.~~"

Section 2. Section 22-3-423, MCA, is amended to read:

"22-3-423. Duties of historic preservation officer. Subject to the supervision of the director of the historical society, the historic preservation officer has the following duties and responsibilities:

(1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;

(2) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;

(3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all inventory work done in the state;

(4) evaluate and formally nominate potential register properties according to the criteria established by the register;

(5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

(8) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(9) adopt rules outlining procedures by which a state agency that has no approved rules under 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter the properties;

(10) respond to requests for consultation under section 106 of the National Historic Preservation Act, as provided for in 22-3-429;

(11) develop procedures and guidelines for the evaluation of heritage property or paleontological remains as provided in 22-3-428;

(12) protect from disclosure to the public any information relating to the location or character of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to the resources or to the area or place where the resources are located; ~~and~~

(13) report the information gathered pursuant to 22-3-422(6), along with any recommendations by the historic preservation officer or the review board, to an appropriate legislative interim committee established under Title 5, chapter 5, part 2. The report required in this subsection must also be incorporated into the biennial report required to be submitted to the governor and the legislature under 22-3-107(8).

~~(13)~~*(14)* any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part."

Section 3. Section 22-3-424, MCA, is amended to read:

"22-3-424. Duties of state agencies. State agencies*, including the Montana university system,* shall:

(1) in consultation with the historical society adopt rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under 22-3-423;

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state are given appropriate consideration in state agency decisionmaking;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains*; and*

(4) pursuant to 22-3-422(6), provide to the preservation review board on the first Tuesday in February of every even-numbered year the following information:

(a) a list of the heritage properties managed by the agencies as those properties have been identified pursuant to this section;

(b) the status and condition of each heritage property;

(c) the stewardship efforts in which the agencies have engaged to maintain each heritage property and the cost of those activities;

(d) a prioritized list of the maintenance needs for the properties; and

(e) a record of the agencies' compliance with subsections (1) and (2)."

Approved April 15, 2011

CHAPTER NO. 188

[SB 5]

AN ACT REPEALING THE TERMINATION DATE FOR THE TRANSFER OF CERTAIN FUNCTIONS FROM THE DEPARTMENT OF LIVESTOCK TO THE BOARD OF MILK CONTROL UNDER THE MILK CONTROL LAWS; REPEALING SECTION 20, CHAPTER 361, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 20, Chapter 361, Laws of 2009, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2011

CHAPTER NO. 189

[SB 9]

AN ACT AUTHORIZING THE USE OF PETROLEUM MIXING ZONES IN THE REMEDIATION AND RESOLUTION OF PETROLEUM RELEASES; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-11-307, 75-11-309, 75-11-503, AND 75-11-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except *that* if the corrective action plan*:*

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; *or*

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to [section 5(3)(a)]; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party; and

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for

consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500 for all other releases.

(5) If an insurer pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 2. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs — *corrective action plans.* (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

~~(e)~~*(f)* The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board. *Upon review, the board may request that the corrective action plan be amended pursuant to [section 5] to include a petroleum mixing zone. If the department finds that the conditions for establishment of a petroleum mixing zone in [section 5] are satisfied, the corrective action plan must be amended to include a petroleum mixing zone.*

~~(f)~~*(g)* The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

~~(g)~~*(h)* (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

~~(h)~~*(i)* The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and

substantiating documents to the board in the form and manner required by the board.

~~(i)~~*(j)* In addition to the documentation in subsections ~~(1)(g) and~~ (1)(h) *and (1)(i)*, when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections ~~(1)(g) and~~ (1)(h) *and (1)(i)*, make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for

requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Section 3. Section 75-11-503, MCA, is amended to read:

"75-11-503. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(5) "Petroleum mixing zone" means an area where water quality standards for petroleum and petroleum constituents may be exceeded subject to the conditions of [section 5] and consistent with rules adopted under 75-11-318, 75-11-319, and 75-11-505.

~~(5)~~*(6)* "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

~~(6)~~*(7)* "Storage" means the actual or intended containment of regulated substances, either on a temporary basis or for a period of years.

~~(7)~~*(8)* "Underground storage tank" or "tank":

(a) means, except as provided in subsections ~~(7)(b)(i)~~ *(8)(b)(i)* through ~~(7)(b)(xi)~~ *(8)(b)(xi)*:

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground;

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground; and

(iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection ~~(7)(b)(v)(A)~~ *(8)(b)(v)(A)* or ~~(7)(b)(v)(B)~~ *(8)(b)(v)(B)*, if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(xi) any pipe connected to a tank described in subsections ~~(7)(b)(i)~~ *(8)(b)(i)* through ~~(7)(b)(ix)~~ *(8)(b)(ix)*; or

(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to facilitywide corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended."

Section 4. Section 75-11-505, MCA, is amended to read:

"75-11-505. Administrative rules — *underground storage tanks — petroleum mixing zones.* *(1)* The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

~~(1)~~*(a)* reporting by owners and operators;

~~(2)~~*(b)* financial responsibility;

~~(3)~~*(c)* release detection, prevention, and corrective action;

~~(4)~~*(d)* procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;

~~(5)~~*(e)* standards for design, construction, installation, and closure;

~~(6)~~*(f)* development of a schedule of annual fees, not to exceed $108 for a tank over 1,100 gallons and not to exceed $36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

~~(7)~~*(g)* a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

~~(8)~~*(h)* delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(2) In accordance with [section 5], the department:

(a) shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a corrective action plan; and

(b) may incorporate by reference rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to mixing zones for ground water."

Section 5. Corrective action — petroleum mixing zones. (1) A corrective action plan prepared pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction with the final remediation and resolution of a petroleum release.

(2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

(a) all source material has been removed to the maximum extent practicable;

(b) the extent of petroleum contamination has been defined;

(c) natural breakdown or attenuation is occurring within the plume; and

(d) no further corrective action is reasonably required at the site.

(3) The boundary of a petroleum mixing zone established in accordance with this section must be contained within the:

(a) boundary of the property on which the petroleum release originated unless a recorded easement on an adjoining property allows the petroleum mixing zone to extend onto the adjoining property; and

(b) unconfined aquifer.

(4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding site-specific, impact-related reason to require monitoring.

(5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent, including benzene, may not exceed a water quality standard adopted by the board pursuant to 75-5-301.

(6) If a petroleum mixing zone is established and maintained:

(a) the petroleum release is considered to be resolved;

(b) no further corrective action for the petroleum release is required; and

(c) the department shall issue a no-further-action letter to the owner or operator stating that a petroleum mixing zone has been established for the release and describing any conditions required to maintain the petroleum mixing zone.

(7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to include a petroleum mixing zone in accordance with this section, including a corrective action plan approved prior to [the effective date of this act].

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 75, chapter 11, part 5, and the provisions of Title 75, chapter 11, part 5, apply to [section 5].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2011

CHAPTER NO. 190

[SB 55]

AN ACT IMPLEMENTING THE FEDERAL MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT; AMENDING SECTIONS 13-13-205, 13-21-201, AND 13-21-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-205, MCA, is amended to read:

"13-13-205. When ballots to be available. (1) Except as provided in subsection (2), the election administrator shall ensure that ballots are available for voting at least:

(a) 30 days prior to an election for those elections held in compliance with 13-1-107(1);

(b) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and

(c) 30 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).

(2) A ballot requested pursuant to Title 13, chapter 21, must be sent to the elector as soon as the ballot is printed or at least 45 days in advance of an election held in conjunction with a federal *primary election, federal* general *election, or federal special* election ~~in compliance with 13-1-104(1)~~."

Section 2. Section 13-21-201, MCA, is amended to read:

"13-21-201. Registration of United States electors — simultaneous application for absentee ballot. (1) A United States elector may register with the election administrator in the elector's county of residence by properly completing, signing, and returning:

(a) the voter registration form;

(b) the federal post card application; or

(c) the federal write-in absentee ballot as provided in 13-21-205.

(2) A registration application under subsection (1)(a) or (1)(b) must be received by the election administrator by the time specified in 13-2-304 for late registration.

(3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under 13-21-210 *and, if transmitted electronically and if required identification is included, is not required to be signed*."

Section 3. Section 13-21-210, MCA, is amended to read:

"13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature; ~~or~~

(ii) by properly completing, signing, and returning to the election administrator the federal post card application*; or*

(iii) by making an electronic request that includes the elector's birth date and affirmation of the voter's eligibility to vote under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, et seq.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator by the time specified in 13-2-304 for late registration.

(3) An application under this section is valid for all *federal,* state*,* and local elections in the calendar year in which the application is made ~~and the next two regularly scheduled federal general elections~~ unless an elector requests to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains eligible to vote and resides at the address provided in the initial application.

(4) If an elector fails to provide the address confirmation required by 13-13-212, the elector will be removed from the ~~permanent~~ absentee ~~ballot~~ list. An elector who is removed from the ~~permanent~~ absentee ~~ballot~~ list will continue to receive absentee ballots during the period covered in the elector's initial application under this section.

(5) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed*, but not later than 45 days before either a federal primary election, federal general election, or federal special election*."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2011

CHAPTER NO. 191

[SB 160]

AN ACT AUTHORIZING THE USE OF OFF-HIGHWAY VEHICLES ON DESIGNATED ROADS AND DESIGNATED TRAILS WITHIN STATE PARKS AND FISHING ACCESS SITES; AND AMENDING SECTION 23-1-128, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-128, MCA, is amended to read:

"23-1-128. ~~Protection of riparian vegetation — limit on motorized~~ *Limits on* camping*, in riparian areas and* operation of off-highway vehicles. *(1)* In order to protect riparian vegetation, provide for stable streambanks, reduce erosion, and provide for nutrient barriers to protect the quality of rivers and streams,~~:~~

~~(1)~~ camping in a motor vehicle, as defined in 61-1-101, is discouraged within 25 feet of a river or stream in state parks and fishing access sites~~; and~~.

(2) ~~the off-road~~ *The* operation of an off-highway vehicle, as defined in 23-2-801, within state parks and fishing access sites is prohibited except ~~for administrative purposes~~*:*

(a) for administrative purposes; or

(b) as designated by the department on roads, trails, or specific areas."

Approved April 15, 2011

CHAPTER NO. 192

[SB 194]

AN ACT IMPLEMENTING A UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT; REVISING PROVISIONS FOR THE NOMINATION AND MEETING OF PRESIDENTIAL ELECTORS; REQUIRING EACH NOMINEE FOR PRESIDENTIAL ELECTOR TO EXECUTE A PLEDGE TO VOTE FOR THE PRESIDENTIAL CANDIDATE OF THE PARTY THAT NOMINATED THE ELECTOR; REQUIRING CERTIFICATION OF THE ELECTORS BY THE GOVERNOR; REVISING PROVISIONS TO FILL A VACANT ELECTOR POSITION; REQUIRING THE SECRETARY OF STATE TO CERTIFY THE FINAL VOTE; AND REPEALING SECTIONS 13-25-104, 13-25-105, AND 13-25-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the "Uniform Faithful Presidential Electors Act".

Section 2. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Cast" means accepted by the secretary of state in accordance with [section 7(3)].

(2) "Elector" means an individual selected as presidential elector under this part.

(3) "President" means the president of the United States.

(4) "Unaffiliated presidential candidate" means a candidate for president of the United States who qualifies for the general election ballot in this state under 13-10-504.

(5) "Vice president" means vice president of the United States.

Section 3. Designation of electors. Pursuant to 13-25-101, each political party qualified under 13-10-601 or unaffiliated presidential candidate shall submit to the secretary of state the names of two qualified individuals for each elector position in this state. One of the individuals must be designated as the elector nominee and the other must be designated as the alternate elector nominee. Unless otherwise provided by [sections 5 through 8], Montana's electors are the winning electors under the laws of this state.

Section 4. Pledge. Each elector nominated by a political party under 13-25-101 or by an unaffiliated presidential candidate shall execute the following pledge: "If selected for the position of elector, I agree to serve and to mark my ballots for president and vice president for the nominees of the political party that nominated me." The executed pledges must accompany the submission of the corresponding names to the secretary of state under 13-25-101(1).

Section 5. Certification of electors. When submitting the certificate of ascertainment as required by 3 U.S.C. 6, the governor shall certify the state's electors to the archivist of the United States. The certificate must state that:

(1) the electors will serve as electors unless a vacancy occurs in the office of elector before the end of the meeting required under [section 7(1)], in which case a substitute elector will fill the vacancy as provided for in [section 6]; and

(2) if a substitute elector is appointed to fill a vacancy, the governor will submit an amended certificate of ascertainment stating the names on the final list of the state's electors.

Section 6. Presiding officer — elector vacancy. (1) The secretary of state shall preside at the meeting of the electors described in [section 7(1)].

(2) The position of an elector not present to vote is considered vacant, and the secretary of state shall appoint an individual as a substitute elector as follows:

(a) if the alternate elector is present to vote, by appointing the alternate elector for the vacant position;

(b) if the alternate elector is not present to vote, by appointing an elector chosen by lot from among the alternate electors present to vote who are nominated by the same political party or unaffiliated presidential candidate;

(c) if the number of alternate electors present to vote is insufficient to fill a vacant position pursuant to subsection (2)(a) or (2)(b), by appointing any immediately available individual who is qualified to serve as an elector and chosen through nomination by and plurality vote of the remaining electors, including nomination and vote by a single elector if only one remains;

(d) if there is a tie between two nominees for substitute elector in a vote conducted under subsection (2)(c), by appointing an elector chosen by lot from among those nominees; or

(e) if all elector positions are vacant and cannot be filled pursuant to subsections (2)(a) through (2)(d), by appointing a single presidential elector, with remaining vacant positions to be filled pursuant to subsection (2)(c) and, if necessary, subsection (2)(d).

(3) To qualify as a substitute elector under subsection (2), an individual who has not executed the pledge required by [section 4] shall execute the following pledge: "I agree to serve and to mark my ballots for president and vice president consistent with the pledge of the individual to whose elector position I have succeeded."

Section 7. Elector voting. (1) The electors shall meet in Helena at 2 p.m. on the first Monday after the second Wednesday in December following their election.

(2) After all vacant positions have been filled pursuant to [section 6], the secretary of state shall provide each elector with a presidential and a vice presidential ballot. The elector shall mark the elector's presidential and vice presidential ballots with the elector's vote for the office of president and vice president, respectively, along with the elector's signature and the elector's legibly printed name.

(3) Unless otherwise provided by law, each elector shall present both completed ballots to the secretary of state, who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with their pledges executed under [section 4 or 6(3)]. Except as otherwise provided by law, the secretary of state may not accept and may not count either an elector's presidential or vice presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector's pledge.

(4) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot in violation of the elector's pledge executed under [section 4 or 6(3)] vacates the office of elector, creating a vacant position to be filled under [section 6].

(5) The secretary of state shall distribute ballots to and collect ballots from a substitute elector and repeat the process specified in this section until all of the electoral votes have been cast and recorded.

Section 8. Amended certificate of ascertainment — certificate of final vote. (1) After the vote of the electors is completed, if the final list of electors differs from the list the governor previously included on a certificate of ascertainment prepared and transmitted pursuant to [section 5], the secretary of state shall immediately prepare an amended certificate of ascertainment and transmit it to the governor for the governor's signature.

(2) The governor shall immediately sign and transmit to the secretary of state the signed amended certificate of ascertainment and a signed duplicate original of the amended certificate of ascertainment that indicates that the amended certificate of ascertainment must be substituted for the certificate of ascertainment previously submitted.

(3) The secretary of state shall prepare a certificate of vote. The electors on the final list shall sign the certificate. The secretary of state shall process and transmit the signed certificate with the amended certificate of ascertainment as provided under 3 U.S.C. 9 through 11.

Section 9. Uniformity of application and construction. In applying and construing [sections 1 through 9], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Section 10. Repealer. The following sections of the Montana Code Annotated are repealed:

13-25-104. Meeting and voting of electors.

13-25-105. Lists of persons voted for.

13-25-107. Vacancy in office of elector.

Section 11. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 13, chapter 25, part 1, and the provisions of Title 13, chapter 25, part 1, apply to [sections 1 through 8].

Approved April 15, 2011

CHAPTER NO. 193

[SB 208]

AN ACT ALLOWING SATURDAY SCHOOL IN K-12 SCHOOLS; REQUIRING THAT SATURDAY SCHOOL BE VOLUNTARY; REQUIRING THAT SATURDAY SCHOOL IS NOT A PUPIL-INSTRUCTION DAY AND DOES NOT COUNT TOWARD THE MINIMUM AGGREGATE HOURS OF PUPIL INSTRUCTION; AND AMENDING SECTION 20-1-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-303, MCA, is amended to read:

"20-1-303. Conduct of school on Saturday or Sunday prohibited — ~~exception~~ *exceptions.* *(1)* Except as provided in ~~this section~~ *subsections (2) and (3)*, pupil instruction may not be conducted on Saturday or Sunday.

(2) In emergencies, pupil instruction may be conducted on a Saturday when it is approved by the trustees of the school district in accordance with the policies adopted by the board of public education.

(3) Pupil instruction may be held on a Saturday at the discretion of a school district for the purpose of providing additional pupil instruction, provided that:

(a) Saturday school is not a pupil-instruction day and does not count toward minimum aggregate hours of pupil instruction provided for in 20-1-301; and

(b) student attendance is voluntary."

Approved April 15, 2011

CHAPTER NO. 194

[SB 210]

AN ACT MAKING IT A CRIMINAL OFFENSE FOR A PERSON TO OBTAIN OR ATTEMPT TO OBTAIN A DANGEROUS DRUG BY MAKING CERTAIN COMMUNICATIONS WITH A PERSON AUTHORIZED TO WRITE PRESCRIPTIONS FOR OR DISPENSE DANGEROUS DRUGS; AND AMENDING SECTIONS 26-1-805 AND 45-9-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-1-805, MCA, is amended to read:

"26-1-805. Doctor-patient privilege. Except as provided in Rule 35, Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist may not, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient that was necessary to enable the physician, surgeon, or dentist to prescribe or act for the patient. *A communication described in 45-9-104(7) is not a privileged communication.*"

Section 2. Section 45-9-104, MCA, is amended to read:

"45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if the person obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing that the person is a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; ~~or~~

(5) the concealment of a material fact*;*

(6) knowingly or purposefully failing to disclose to a practitioner, as defined in 50-32-101, that the person has received the same or a similar dangerous drug or prescription for a dangerous drug from another source within the prior 30 days; or

(7) knowingly or purposefully communicating false or incomplete information to a practitioner with the intent to procure the administration of or a prescription for a dangerous drug. A communication of this information for the purpose provided in this subsection is not a privileged communication."

Approved April 15, 2011

CHAPTER NO. 195

[SB 223]

AN ACT REVISING THE PENSION BENEFIT PROVIDED BY THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AMENDING SECTION 19-17-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-17-404, MCA, is amended to read:

"19-17-404. Amount of pension and disability benefits. (1) Each eligible member must receive a pension or disability benefit as provided in this section.

(2) (a) Except as provided in subsection (2)(c), the full pension benefit paid to eligible members is $150 a month.

(b) A partial pension benefit is calculated by multiplying the full pension benefit in subsection (2)(a) by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20.

(c) ~~The~~ *Except as provided in subsection (5), the* full pension benefit of a member who continued to be an active member after completing 20 years of service must be increased by $7.50 a month for each additional year of active service the member completed after 20 years of service, up to 30 total years of service.

(3) The disability benefit paid to an eligible member is calculated in the same manner as partial pension benefits described in subsection (2)(b), except that the numerator may not be less than 10.

(4) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner.

(5) (a) Subject to subsection (5)(b), the pension benefit of a member who continues to be a member after completing 30 years of credited service must be increased by $7.50 per month for each additional year of credited service after 30

years if the pension trust fund is actuarially sound and the amortization period for any unfunded liabilities remains 20 years or less.

(b) A member does not have a contract right to any additional pension benefits received pursuant to subsection (5)(a), and the member's monthly benefit must be reduced to the amount provided under subsection (2)(c) if the amortization period for the unfunded liabilities is greater than 20 years.

(c) This subsection (5) applies only to members who retire after [the effective date of this act]."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 15, 2011

CHAPTER NO. 196

[SB 236]

AN ACT REVISING THE SOLID WASTE MANAGEMENT LAWS RELATED TO POWERS AND DUTIES OF LOCAL GOVERNMENTS; CLARIFYING A LOCAL GOVERNMENT'S AUTHORITY TO CONTROL THE DISPOSITION OF SOLID WASTE GENERATED WITHIN THE JURISDICTION OF THE LOCAL GOVERNMENT; AMENDING SECTION 75-10-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-112, MCA, is amended to read:

"75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste management and resource recovery plan and propose modifications to the state's solid waste management and resource recovery plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) subject to 15-10-420, finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of ~~a~~ *the* local government*, except that, in the absence of an imminent threat to public health, safety, or the environment, a local government may not adopt a flow control or similar ordinance to require use of a specific transfer station or landfill for disposal of solid waste*;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2011

CHAPTER NO. 197

[SB 248]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO APPOINT A COUNTY TAX APPEAL BOARD WITH THE NUMBER OF MEMBERS OVER THREE TO BE DETERMINED BY THE COUNTY; PROVIDING THAT IN COUNTIES WITH BOARDS OF MORE THAN THREE MEMBERS, ONLY THREE OF THE MEMBERS HEAR EACH APPEAL; AND AMENDING SECTION 15-15-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-15-101, MCA, is amended to read:

"15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a ~~three-member~~ county tax appeal board, with *a minimum of three members and with* the members to serve staggered terms of 3 years each. The members of each county tax appeal board must be residents of the county in which they serve. The members receive compensation of $45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board meets to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. *At the organizational meeting the members shall choose one member as the presiding officer of the board.* ~~It~~ *The county tax appeal board* shall continue in session from July 1 of the current tax year until December 31 of the current tax year to hear protests concerning assessments made by the department until the business of hearing protests is disposed of and, as provided in 15-2-201, may meet after December 31.

(3) In counties that have appointed more than three members to the county tax appeal board, only three members shall hear each appeal. The presiding officer shall select the three members hearing each appeal.

~~(3)~~*(4)* In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. Upon notification by the county tax appeal board, the county clerk and recorder shall publish a notice to taxpayers, giving the time the county tax appeal board will be in session to hear scheduled protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published by May 15 of the current tax year.

~~(4)~~*(5)* Challenges to a department rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-1-406."

Approved April 15, 2011

CHAPTER NO. 198

[SB 275]

AN ACT REVISING LAWS RELATING TO PUBLIC CEMETERIES; AUTHORIZING CEMETERY GROUNDS TO BE USED FOR ANOTHER PUBLIC PURPOSE WHEN CEMETERY GROUNDS ARE UNSUITABLE FOR THE INTERMENT OF BODIES; AND AMENDING SECTION 7-35-4102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-35-4102, MCA, is amended to read:

"7-35-4102. Vesting of title to cemetery grounds — restrictions on use. The title to lands used as a public cemetery or graveyard, situated in or near ~~to~~ any city~~,~~ *or* town~~, or village~~ and used by the inhabitants ~~thereof~~ *of the city or town* as a ~~burial ground~~ *burial ground* ~~continuously~~ without interruption for 5 years, is vested in the inhabitants of ~~such~~ *the* city~~,~~ *or* town~~, or village~~. The lands must ~~not~~ be used ~~for any other purpose than~~ *as* a public cemetery, except*:* ~~that~~

(1) the bodies interred ~~therein~~ *in the cemetery grounds* may be removed and no ~~other~~ *additional bodies may be* interred ~~therein~~ *in the cemetery grounds* upon the order of the board of county commissioners, city council, or other body having authority when it appears that the public health is endangered or for any other good cause~~, but a~~. *A* new cemetery must be purchased and laid out by proper authority and ~~such~~ *the* bodies removed ~~and~~ *from the old cemetery must be* interred ~~therein~~ *in the new cemetery*~~,~~. ~~and the~~ *The* old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

(2) when a portion of the cemetery grounds are determined to be unsuitable for the interment of bodies, the unsuitable grounds may be used for another public purpose upon the order of the board of county commissioners, city council, or other body having authority."

Approved April 15, 2011

CHAPTER NO. 199

[SB 280]

AN ACT AUTHORIZING THE COMMISSIONER OF HIGHER EDUCATION TO DEVELOP A SELF-INSURED STUDENT HEALTH PLAN FOR ENROLLED STUDENTS OF THE MONTANA UNIVERSITY SYSTEM AND THEIR DEPENDENTS, INCLUDING STUDENTS OF A COMMUNITY COLLEGE DISTRICT; AUTHORIZING CERTAIN METHODS BY WHICH THE COMMISSIONER MAY FINANCE THE COSTS TO ESTABLISH THE PLAN; AND AMENDING SECTION 33-1-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of this part is to establish the structure by which the Montana university system may develop a self-insured student health plan, to work in conjunction with available campus student health services for enrolled students of the Montana university system and their dependents, including students of a community college district, and to clarify that the plan is not regulated by or subject to the provisions of Title 33.

Section 2. Authorization to establish self-insured health plan for students — requirements — exemption. (1) The commissioner may establish a self-insured student health plan for enrolled students of the system and their dependents, including students of a community college district. In developing a self-insured student health plan, the commissioner shall:

(a) maintain the plan on an actuarially sound basis;

(b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the plan; and

(c) deposit all reserve funds, contributions and payments, interest earnings, and premiums paid to the plan. The deposits must be expended for claims under the plan and for the costs of administering the plan, including but not limited to

the costs of hiring staff, consultants, actuaries, and auditors, purchasing necessary reinsurance, and repaying debts.

(2) Prior to the implementation of a self-insured student health plan, the commissioner shall consult with affected parties, including but not limited to the board of regents and representatives of enrolled students of the system.

(3) A self-insured student health plan developed under this part is not responsible for and may not cover any services or pay any expenses for which payment has been made or is due under an automobile, premises, or other private or public medical payment coverage plan or provision or under a workers' compensation plan or program, except when the other payor is required by federal law to be a payor of last resort. The term "services" includes but is not limited to all medical services, procedures, supplies, medications, or other items or services provided to treat an injury or medical condition sustained by a member of the plan.

(4) The provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in this part.

Section 3. Authorization to finance self-insured health plan for students. The commissioner may, subject to the approval of the board of regents, finance the initial costs to establish the plan established pursuant to [section 1] by using any of the following methods:

(1) authorizing a long-term loan of university funds. The loan must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(2) issuing and selling bonds and notes in whole or in part for this purpose; or

(3) using any other lawful means, including the assessment of student fees.

Section 4. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) Except as otherwise provided in Title 33, chapter 22, this code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) This code does not apply to the self-insured student health plan established in [sections 1 through 3]."

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 1 through 3].

Approved April 15, 2011

CHAPTER NO. 200

[SB 287]

AN ACT REQUIRING THAT CERTAIN CORPORATE OFFICERS AND MANAGERS OF MANAGER-MANAGED LIMITED LIABILITY COMPANIES WORKING IN THE CONSTRUCTION INDUSTRY BE COVERED BY WORKERS' COMPENSATION OR OBTAIN AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; AMENDING SECTIONS 39-71-401 AND 39-71-417, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and exemptions — elections — notice. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following:

(a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or*, except as provided in subsection (3), a* manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of

a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as provided in 49 U.S.C. 13102;

(w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(z) a musician performing under a written contract.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means*:*

(i) a sole proprietor~~,~~*;*

(ii) a working member of a partnership~~,~~*;*

(iii) a working member of a limited liability partnership~~, or~~*;*

(iv) a working member of a member-managed limited liability company*; or*

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. Section 39-71-417, MCA, is amended to read:

"39-71-417. Independent contractor certification. (1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership; ~~or~~

(iv) a working member of a member-managed limited liability company*; or*

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) (a) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(i) the applicant's name and address;

(ii) the applicant's social security number;

(iii) each occupation for which the applicant is seeking independent contractor certification; and

(iv) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.

(c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:

(i) the applicant certifies under oath that the previously submitted documents are still valid and current; and

(ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation

Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the department's independent contractor central unit denies an application for an independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2)."

Section 3. Effective date. [This act] is effective July 1, 2011.

Approved April 15, 2011

CHAPTER NO. 201

[SB 290]

AN ACT EXCLUDING AN INDEPENDENT CONTRACTOR FROM THE DEFINITION OF EMPLOYEE UNDER HUMAN RIGHTS LAWS; AMENDING SECTIONS 49-2-101 AND 49-3-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-101, MCA, is amended to read:

"49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

(3) "Commission" means the commission for human rights provided for in 2-15-1706.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

(6) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(7) "Creditor" means a person who, regularly or as a part of the person's business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(8) "Department" means the department of labor and industry provided for in 2-15-1701.

(9) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(10) *(a)* "Employee" means an individual employed by an employer.

(b) The term does not include an individual providing services for an employer if the individual has an independent contractor exemption certificate issued under 39-71-417 and is providing services under the terms of that certificate.

(11) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(12) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(13) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(14) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

(15) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(16) "National origin" means ancestry.

(17) (a) "Organization" means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

(b) The term does not include a labor organization.

(18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

(19) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private."

Section 2. Section 49-3-201, MCA, is amended to read:

"49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to ~~assure~~ *ensure* compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(6) For the purposes of this section, employment does not refer to or include services provided by an individual working under an independent contractor exemption certificate issued under 39-71-417."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2011

CHAPTER NO. 202

[SB 355]

AN ACT ESTABLISHING THE MONTANA UNIVERSITY SYSTEM ASSISTANCE PROGRAM TO BE FUNDED FROM PRIVATE DONATIONS; ESTABLISHING PROCEDURES AND REQUIREMENTS FOR THE BOARD OF REGENTS TO ADMINISTER THE PROGRAM; CREATING A STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 20-25-426, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana university system assistance program — purpose — duties of board of regents. (1) There is a Montana university system assistance program administered by the board of regents through the office of the commissioner of higher education. The program must allow a private donor to make tax deductible contributions by cash, check, or money order that benefit a qualifying institution and students of these public institutions.

(2) As part of the program, the board of regents shall:

(a) provide a donor with a receipt that reflects the contribution in sufficient detail for the donor to claim any applicable credits or deductions for state and federal income tax purposes;

(b) deposit donations to the program in the state special revenue account established by [section 2];

(c) develop procedures and forms that enable a donor to make contributions by cash, check, or money order for the benefit of a specific qualifying institution. If a donor does not select an institution, the donation must be allocated on an equal basis to all qualifying institutions by dividing the total donation by the number of qualifying institutions.

(d) develop procedures and forms that enable a donor to select the percentage of the donation that will be used by a qualifying institution for building projects, educational programs, and academic scholarships. If a donor does not make a selection, the donation may be used for the general support, maintenance, or improvement of the institution as provided in 17-3-1001(2).

(e) maintain adequate records to account for contributions that are allocated to each specific qualifying institution and any donor selection preference;

(f) provide each qualifying institution with a schedule showing the total donations credited to the institution at the end of each fiscal year; and

(g) distribute donor contributions to the qualifying institution's endowment fund as provided in [section 2].

(3) For the purposes of this section and [section 2], "qualifying institution" means:

(a) a Montana community college that is part of a community college district, defined and organized as provided in 20-15-101; and

(b) a unit of the Montana university system, as described in 20-25-201, or any of its affiliated campuses.

Section 2. Voluntary contribution account for Montana's universities, colleges of technology, and community colleges. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the Montana university system assistance account. The board of

regents shall deposit donations to the Montana university system assistance program in the account as provided in [section 1].

(2) All donations must be from a private source and may not be expended for any purpose other than for the benefit of qualifying institutions.

(3) Earnings in the account are allocable to each qualifying institution in proportion to each qualifying institution's share of the account balance.

(4) The board of regents shall distribute donor contributions to the qualifying institution's endowment fund. A distribution may not exceed the institution's allocation and must be used for the purpose established by the donor as provided in [section 1(2)(d)]. The distributions are derived from a private nonstate source and are payable without an appropriation pursuant to 17-8-101.

Section 3. Section 20-25-426, MCA, is amended to read:

"20-25-426. Donations, grants, gifts. All donations, grants, gifts, or devises ~~shall~~ *must* be made to each unit in its legal name *or to the Montana university system assistance program established by [section 1]*. If made to any officer or board of the unit, ~~they shall~~ *the donations, grants, gifts, or devises must* be immediately transferred to the unit."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective July 1, 2011.

Section 6. Applicability. [This act] applies to the 2011 academic year and subsequent academic years.

Approved April 15, 2011

CHAPTER NO. 203

[SB 268]

AN ACT REQUIRING THAT SUPREME COURT JUSTICES BE ELECTED AND APPOINTED FROM SUPREME COURT DISTRICTS; ESTABLISHING SUPREME COURT DISTRICTS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA AT A SPECIAL ELECTION TO BE HELD CONCURRENTLY WITH THE 2012 PRIMARY ELECTION; AMENDING SECTIONS 3-2-101 AND 3-2-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2-101, MCA, is amended to read:

"3-2-101. Number, election, and term of office — *selection of chief justice.* *(1)* The supreme court consists of a chief justice and six associate justices who ~~are elected by the qualified electors of the state at large~~ *must be qualified electors of the district from which they are elected, with each member elected from a separate district of the state as provided in [section 3]. Each justice must be elected* at the general ~~state elections~~ *election* next preceding the expiration of the ~~terms~~ *term* of office of ~~their predecessors, respectively,~~ *the justice's predecessor* and ~~hold their offices~~ *holds office* for the term of 8 years from ~~and after~~ the first Monday of January ~~next~~ succeeding ~~their~~ *the justice's* election.

(2) After the general election in 2016, the chief justice must be selected by the majority vote of the seven justices at the first meeting of the court in each year after a general election."

Section 2. Section 3-2-102, MCA, is amended to read:

"3-2-102. Qualifications and residence. (1) A person is not eligible for the office of justice of the supreme court unless the person is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office. *Once elected from a district, a justice is not required to reside within the district during the justice's service in office.*

(3) A supreme court justice must, at the time of initial election, be a qualified elector of the supreme court district from which the justice is elected. A supreme court justice appointed to fill a vacancy must, at the time of appointment, be a qualified elector of the same initial supreme court district as the justice being replaced, and in an election following an appointment, the elected justice must be a qualified elector of the initial district."

Section 3. Supreme court districts defined — number of judges. (1) In this state there are seven supreme court judicial districts, distributed as follows:

(a) 1st district: Cascade, Chouteau, Fergus, Golden Valley, Hill, Judith Basin, Liberty, Meagher, Pondera, Teton, and Wheatland Counties;

(b) 2nd district: Big Horn, Blaine, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Treasure, Valley, and Wibaux Counties;

(c) 3rd district: Yellowstone County;

(d) 4th district: Lewis and Clark, Deer Lodge, Granite, Jefferson, Ravalli, Powell, and Broadwater Counties;

(e) 5th district: Flathead, Lincoln, Glacier, Sanders, and Toole Counties;

(f) 6th district: Gallatin, Madison, Beaverhead, and Silver Bow Counties;

(g) 7th district: Missoula, Lake, and Mineral Counties.

(2) There must be one supreme court justice selected from each district.

(3) The legislature shall review the districts after each decennial census for purposes of maintaining districts with approximately equal populations while following county lines.

Section 4. Transition. (1) [This act] may not remove any justice that is holding office on [the effective date of this act] during the term for which the justice was elected or appointed. After [the effective date of this act], each sitting associate justice must be assigned to the judicial district that corresponds to the associate justice's current seat number and the chief justice must be assigned to the seventh district.

(2) (a) Except as provided in subsection (2)(b), each supreme court justice who chooses to seek reelection at the end of the justice's current term shall run for reelection in the district to which the justice is assigned under subsection (1).

(b) A sitting justice that chooses to seek election in a district other than the district assigned under subsection (1) may run for election in the district if the justice resigns the justice's current seat effective as of the date the justice files for election in the district to which the justice seeks election.

(3) In the 2012 election, the two candidates receiving the most votes in the primary for each seat up for reelection advance to the 2012 general election for the district that corresponds to the same seat number.

Section 5. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 3, chapter 2, and the provisions of Title 3, chapter 2, apply to [section 3].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective upon approval by the electorate.

Section 8. Applicability. [This act] applies to the election and appointment of supreme court justices to terms that begin on or after [the effective date of this act].

Section 9. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at a special election to be held concurrently with the primary election held in the spring of 2012 by printing on the ballot the full title of [this act] and the following:

☐ FOR requiring supreme court justices to be elected or appointed from districts with approximately equal populations.

☐ AGAINST requiring supreme court justices to be elected or appointed from districts with approximately equal populations.

CHAPTER NO. 204

[HB 61]

AN ACT ALLOWING A LOCAL AUTHORITY TO SET REDUCED SPEED LIMITS ON CERTAIN UNPAVED ROADS; AND AMENDING SECTION 61-8-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-310, MCA, is amended to read:

"61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour *on a paved road or less than 25 miles an hour on an unpaved road*; ~~or~~ *or*

~~(d)~~*(d)* decreases the limit in a school zone or in an area near a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may

adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) (a) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in 61-8-726, and that the school zone has ended.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

(6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the school zone includes a state highway or a federal-aid highway or extension of a federal-aid highway.

(7) A local authority shall consult with district officials for a school when:

(a) establishing or altering the area of a school zone near the school; or

(b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school.

(8) A speed limit set on an unpaved road under subsection (1)(c) must be the same for all types of motor vehicles that may be operated on the road."

Approved April 18, 2011

CHAPTER NO. 205

[HB 95]

AN ACT GENERALLY REVISING HUMAN RIGHTS LAW; CLARIFYING THE SUBPOENA POWER OF THE DEPARTMENT OF LABOR AND INDUSTRY AND THE COMMISSIONER OF LABOR AND INDUSTRY; AUTHORIZING AN INDIAN EMPLOYMENT PREFERENCE ON OR NEAR RESERVATIONS; DELETING THE UNDEFINED TERM "ADAPTIVE DESIGN" WITH RESPECT TO HOUSING DISCRIMINATION; EXTENDING DEADLINES FOR ADMINISTRATIVE ACTION IF THE PARTIES AGREE TO MEDIATION; AMENDING SECTIONS 49-2-203, 49-2-303, 49-2-305, 49-2-403, AND 49-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-203, MCA, is amended to read:

"49-2-203. Subpoena power *of department and commissioner*. (1) The ~~commission~~ *department* may ~~subpoena witnesses~~ *issue subpoenas*, take the testimony of any person under oath, administer oaths, and~~, in connection therewith,~~ require *for the purpose of examination* the production ~~for examination~~ of books, papers, or other tangible evidence relating to a ~~matter in question before the commission~~ *complaint of discrimination filed under this chapter*.

(2) The department's staff may request that a subpoena relating to a matter under investigation be issued by the commissioner or the commissioner's authorized representative. The authorized representative may not be involved in enforcement of human rights. The commissioner may subpoena witnesses, take testimony under oath, administer oaths, and require the production~~, for examination,~~ of books, papers, or other ~~intangible~~ *tangible* evidence *for examination relating to the matter under investigation*.

~~(3) A party may request subpoenas from the commissioner for the purposes provided in subsection (2).~~

~~(4)~~*(3)* Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act."

Section 2. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference, as provided for in 2-18-111 and 18-1-110, may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section:

(a) for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents; or

(b) for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse.

(6) The provisions of this chapter do not apply to a business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise required by a contract or other agreement under which preferential treatment may be given to an individual based on the individual's status as an Indian living on or near a reservation."

Section 3. Section 49-2-305, MCA, is amended to read:

"49-2-305. Discrimination in housing — exemptions. (1) It is an unlawful discriminatory practice for the owner, ~~lessee~~ *lessor*, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement

that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability includes:

(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the ~~lessor's~~ *lessee's* or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features ~~of adaptive design~~:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (b)(3) through (b)(5), as those provisions read on March 31, 1996.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as the owner's residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

Section 4. Section 49-2-403, MCA, is amended to read:

"49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) through ~~(5)~~ *(6)* and 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Section 5. Section 49-2-504, MCA, is amended to read:

"49-2-504. Informal investigation — conciliation — findings. (1) The department shall informally investigate the matters set out in the complaint promptly and impartially to determine whether there is reasonable cause to believe that the allegations are supported by a preponderance of the evidence.

(2) (a) During the informal investigation process and before the department issues a finding under subsection (7), the department may attempt to resolve the complaint by mediation.

(b) If the parties to the complaint voluntarily agree to enter into the mediation process, the time period for the department to complete the informal investigation and issue a finding under subsection (7) may be extended up to 45 days. An agreement to enter into mediation serves to extend the time for hearing beyond 12 months as provided for in 49-2-505(2).

~~(b)~~*(c)* If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe that unlawful discrimination occurred, the department shall attempt to resolve the complaint by conciliation in a manner that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, found in the investigation.

(3) The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.

(4) If the department determines that the inclusion of documents or information obtained by the department would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

(5) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.

(6) The department shall commence proceedings within 30 days after receipt of a complaint.

(7) (a) After the informal investigation, the department shall issue a finding on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. ~~The~~ *Unless the time period is extended as provided in subsection (2)(b), the* finding must be issued within 180 days after a complaint is filed, except that the department shall issue the finding within 120 days after a complaint is filed under 49-2-305.

(b) If the department finds that there is no reasonable cause to believe that unlawful discrimination occurred, it shall issue a notice of dismissal and dismiss the case from the department's administrative process. After receipt of a notice of dismissal, a charging party may:

(i) continue the administrative process by filing objections with the commission as provided in 49-2-511; or

(ii) discontinue the administrative process and commence proceedings in district court as provided in 49-2-511.

(c) If the department finds that there is reasonable cause to believe that unlawful discrimination occurred and conciliation efforts are unsuccessful, the department shall certify the complaint for hearing pursuant to 49-2-505."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2011

CHAPTER NO. 206

[HB 103]

AN ACT TO IMPROVE TAX ADMINISTRATION AND RECORDS MANAGEMENT BY AUTHORIZING THE DEPARTMENT OF REVENUE TO REPRODUCE ANY ORIGINAL TAX DOCUMENT AND TO MAINTAIN THE REPRODUCTION AS THE DEPARTMENT'S OFFICIAL RECORD; AUTHORIZING THE DEPARTMENT OF REVENUE TO DISPOSE OF ITS ORIGINAL TAX RECORDS THAT ARE REPRODUCED IN ACCORDANCE WITH RULES ADOPTED BY THE SECRETARY OF STATE IN CONSULTATION WITH THE STATE RECORDS COMMITTEE; AMENDING SECTIONS 2-6-110 AND 15-1-103, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-110, MCA, is amended to read:

"2-6-110. Electronic information and nonprint records — public access — fees. (1) (a) Except as provided by law, each person is entitled to a copy of public information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, including the retrieval or production of electronic mail; and

(e) the hourly market rate for an administrative assistant in pay band 3 of the broadband pay plan, as provided for in 2-18-301, in the current fiscal year for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with 2-15-405.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) ~~An~~ *Subject to 15-1-103, an* agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information."

Section 2. Section 15-1-103, MCA, is amended to read:

"15-1-103. ~~Destruction~~ *Disposal* of tax records ~~authorized~~ — procedure. (1) Notwithstanding ~~the~~ *any other* provisions of ~~any other chapter of this code~~ *law*, the department ~~of revenue is authorized to destroy~~ *may dispose of* tax records more than 3 years old ~~as shall be determined to be of no~~ *if the records do not have any* further value *or as provided in subsection (3)*.

(2) Authorization for ~~destruction~~ *disposal* of tax records ~~shall~~ *must* be *made* by the director of ~~revenue~~ *the department* or authorized employees of the

department. A copy of the authorization and authenticated list ~~shall~~ *of the records must* be maintained by the department.

(3) The department may dispose of its original tax records after those records have been reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013. The department shall maintain the reproduction as the public record. The reproduction or certified copy of the reproduction may be used in place of the department's original in any court or proceeding and has the same force and effect as the department's original record."

Section 3. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2012.

(2) [Section 4] and this section are effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all tax records that exist on [the effective date of this section].

Approved April 18, 2011

CHAPTER NO. 207

[HB 178]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO USE THE FEDERAL SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM TO VERIFY THE LAWFUL PRESENCE IN THE UNITED STATES OF AN APPLICANT FOR A DRIVER'S LICENSE OR IDENTIFICATION CARD; AMENDING THE DEPARTMENT'S RULEMAKING AUTHORITY REGARDING ISSUANCE OF IDENTIFICATION CARDS; WITHDRAWING THE DEPARTMENT'S AUTHORITY TO APPOINT AGENTS FOR ISSUANCE OF IDENTIFICATION CARDS; AMENDING SECTIONS 61-5-105, 61-12-501, 61-12-502, AND 61-12-504, MCA; AND REPEALING SECTION 61-12-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) whose license or driving privilege is currently suspended, revoked, or canceled or who is disqualified from operating a commercial motor vehicle in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;

(3) who is addicted to the use of alcohol or narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination;

(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

(7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may, in its discretion, issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations;

(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway;

(9) who is not a resident of or domiciled in Montana except as provided in 61-5-103(3); or

(10) ~~who does not submit proof satisfactory to the department that the applicant's~~ *whose* presence in the United States is *not* authorized under federal law. *When an applicant who is not a citizen of the United States applies for a driver's license, the department shall verify that the applicant is lawfully present in the United States by using the federal systematic alien verification for entitlements program.* The department may not accept ~~as a primary source of identification~~ a driver's license issued by ~~a~~ *another* state ~~if the state does not require that a driver licensed in that state be~~ *as proof that an applicant is* lawfully present in the United States under federal law."

Section 2. Section 61-12-501, MCA, is amended to read:

"61-12-501. Authority of department to issue identification cards — *lawful presence verification.* *(1)* The department may issue *an* identification ~~cards~~ *card* to any person *who maintains a residence in this state and whose presence in the United States is authorized under federal law*.

(2) When an applicant who is not a citizen of the United States applies for an identification card, the department shall verify that the applicant is lawfully present in the United States by using the federal systematic alien verification for entitlements program."

Section 3. Section 61-12-502, MCA, is amended to read:

"61-12-502. Rules for identification cards. The department shall formulate and adopt ~~reasonable~~ rules ~~for the application for and issuing~~ *governing the issuance and cancellation* of identification cards ~~and cancellation thereof and shall require the furnishing of such information necessary for the purpose of this part~~ *that comport with the proof of identify, residence, and authorized presence standards for a driver's license issued under Title 61, chapter 5*."

Section 4. Section 61-12-504, MCA, is amended to read:

"61-12-504. Fees for identification cards — *expiration of cards.* (1) ~~Fees not in excess of $8 for identification cards issued pursuant to this part must be collected and deposited in the general fund.~~ *Fees not in excess of $8 for identification cards issued pursuant to this part must be collected and deposited in the general fund.*

(2) A person with a disability, as defined in 39-30-103, may obtain a free identification card. An individual discharged from any correctional facility must be furnished a free identification card upon release, discharge, or parole.

~~(2)~~*(3) (a)* ~~Each~~ *An* identification card expires on the anniversary of the date of birth of the holder 4 years after the date of issue.

(b) An identification card issued to a person whose presence in the United States is temporarily authorized under federal laws expires, as determined by the department, no later than the expiration date of the official document issued to the person by the United States citizenship and immigration services of the department of homeland security that authorizes the person's presence in the United States."

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:

61-12-503. Agents for issuance of identification cards.

Approved April 18, 2011

CHAPTER NO. 208

[HB 191]

AN ACT REVISING THE LICENSING AND REGISTRATION PROVISIONS FOR RETAIL FOOD ESTABLISHMENTS; EXEMPTING THE SALE OF BAKED GOODS AND PRESERVES FOR CHARITABLE COMMUNITY PURPOSES FROM THE LICENSING REQUIREMENTS; REVISING THE REGISTRATION PROVISIONS FOR CERTAIN NONPROFIT ORGANIZATIONS; AMENDING SECTIONS 50-50-103 AND 50-50-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, homemade foods are often the staple of fundraising efforts at the grassroots level in many communities where impromptu, nonprofessionally organized events that include homemade food are conducted to benefit individuals or organizations; and

WHEREAS, some fundraising events are not organized or sponsored by a nonprofit entity that has attained that status by meeting the requirements of 26 U.S.C. 501; and

WHEREAS, in many small communities, only a handful of nonprofit organizations are registered with the Internal Revenue Services as tax-exempt organizations; and

WHEREAS, many groups or individuals that want to offer their assistance to others by making and donating homemade foods for charitable purposes do not have the option of being affiliated with a registered nonprofit organization; and

WHEREAS, 50-50-202, MCA, is anti-community because it limits and eliminates the ability of community-based organizations, churches, and individuals from offering "the fruits of their kitchen labors" for fundraising purposes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-50-103, MCA, is amended to read:

"50-50-103. Department authorized to adopt rules — advisory council. (1) To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of

food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons *selling baked goods or preserves* at farmer's markets *or exclusively for a charitable community purpose*.

(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens.

(3) (a) The department shall establish a food safety task force or advisory council to assist in the development of administrative rules or to review any proposed legislation related to the provisions of this chapter.

(b) The task force or advisory council must be composed of equal numbers of representatives of the food establishments and representatives of state and local government.

(c) The department shall present administrative rules and any legislation to be proposed by the department to the task force or advisory council prior to its proposal or introduction. When the department learns of proposed legislation related to the provisions of this chapter that has not been proposed by the department, the department shall provide copies of that legislation for review by the task force or advisory council and shall provide to the legislature any comments of the task force or advisory council."

Section 2. Section 50-50-202, MCA, is amended to read:

"50-50-202. Establishments exempt from license requirement — farmer's market records. (1) Establishments owned or operated by the state or a political subdivision of the state that employ a full-time sanitarian are exempt from licensure but shall comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) *(a)* A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection*:*:

~~(a)~~*(i)* must be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter~~; and~~

~~(b) prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department~~*; and*

(ii) prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department.

(b) Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or in person, before the event. The notification required is limited to the date and time of the event, items planned to be sold, and an estimate of the number of people expected to be served at the event.

(3) (a) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products at a farmer's market.

(b) A license is not required of a person selling baked goods or preserves at a farmer's market *or exclusively for a charitable community purpose*.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2011

CHAPTER NO. 209

[HB 213]

AN ACT PROVIDING FOR THE OPERATION OF ELECTRIC VEHICLES BY DISABLED PERSONS; CREATING A LOW-SPEED RESTRICTED DRIVER'S LICENSE; DEFINING "LOW-SPEED ELECTRIC VEHICLE" AND "GOLF CART"; PROHIBITING THE OPERATION OF A LOW-SPEED ELECTRIC VEHICLE ON CERTAIN HIGHWAYS; PROVIDING FOR THE REGISTRATION OF A LOW-SPEED ELECTRIC VEHICLE AND A GOLF CART OPERATED BY A PERSON WITH A LOW-SPEED RESTRICTED DRIVER'S LICENSE; ALLOWING FOR OPERATION OF A LOW-SPEED ELECTRIC VEHICLE WITHOUT A MOTORCYCLE ENDORSEMENT; REQUIRING CERTAIN EQUIPMENT ON A LOW-SPEED ELECTRIC VEHICLE; AMENDING SECTIONS 10-3-1307, 23-1-105, 61-1-101, 61-3-201, 61-3-301, 61-3-312, 61-3-321, 61-3-332, 61-5-102, 61-6-158, 61-9-220, AND 61-9-432, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Low-speed electric vehicle — golf cart operated by person with low-speed restricted driver's license — operating requirements. (1) A low-speed electric vehicle may be operated only by a person with a low-speed restricted driver's license.

(2) A low-speed electric vehicle or golf cart operated by a person with a low-speed restricted driver's license may be operated only on a highway for which the posted speed limit does not exceed 25 miles per hour.

(3) A low-speed electric vehicle or golf cart operated by a person with a low-speed restricted driver's license may not cross a highway with a posted speed limit of greater than 45 miles per hour.

(4) Except as provided in subsections (1) through (3), the provisions of this chapter apply to a low-speed electric vehicle or golf cart operated by a person with a low-speed restricted driver's license.

Section 2. Low-speed restricted driver's license. (1) The department may issue a low-speed restricted driver's license to a person who is physically or otherwise impaired in a manner and degree that prevent the person from safely operating a motor vehicle across the range of speeds permitted or required on a public highway.

(2) (a) To qualify for a low-speed restricted driver's license, an applicant shall submit to the department a medical evaluation or statement from a treating physician that attests to the person's impairment and resulting inability to safely operate a motor vehicle across the range of speeds permitted or required on a public highway.

(b) The applicant must be otherwise qualified for a driver's license under this chapter and shall apply for a driver's license under 61-5-107, pay the fees

required in 61-5-111, and pass the vision test, the knowledge test, and the road test required under 61-5-110. The road test must be modified to conform to the operational limitations of the vehicle.

(3) The department may issue a low-speed restricted instruction permit, valid for 30 days from the date of issuance, to a person who qualifies for a low-speed restricted driver's license under this section and who passes the vision test and knowledge test required in 61-5-110. A permitholder may operate a low-speed electric vehicle or golf cart pursuant to [section 1] while in the immediate possession of the permit and accompanied by a licensed driver seated beside the permitholder.

Section 3. Section 10-3-1307, MCA, is amended to read:

"10-3-1307. Responsibilities of department of transportation — assessment and collection of fees — issuance of permits — inspection of motor carriers. (1) After receiving notification from the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall assess fees according to the following schedule:

(a) a fee of $2,500 must be assessed for each cask designed for transport by truck; and

(b) a fee of $4,500 must be assessed for the first cask designed for transport by rail and a fee of $3,000 for each additional cask designed for transport by rail that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation shall issue to the owner of the waste a permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) Fees under this section must be assessed regardless of ownership, and ~~61-3-321(13)~~ *61-3-321(14)* and 61-10-127 do not apply."

Section 4. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges. (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in ~~61-3-321(18)(a)~~ *61-3-321(19)(a)* may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department."

Section 5. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(7) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(8) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in

part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (8):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(9) "Commission" means the state transportation commission.

(10) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(11) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(12) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(13) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (13)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(14) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(15) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(16) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(17) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(18) "Driver" means a person who drives or is in actual physical control of a vehicle.

(19) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(20) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(21) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(22) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

(b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

~~(22)~~*(23)* "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

~~(23)~~*(24)* "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(24)~~*(25)* "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(25)~~*(26)* "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

~~(26)~~*(27)* "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

~~(27)~~*(28)* "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(29) "Low-speed electric vehicle" means a motor vehicle, upon or by which a person may be transported, that:

(a) has four wheels;

(b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified by the manufacturer;

(c) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(e) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(f) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565; and

(g) is equipped as provided in 61-9-432.

(30) "Low-speed restricted driver's license" means a license or permit limited to the operation of a low-speed electric vehicle or a golf cart issued under or granted by the laws of this state, including:

(a) a temporary license or instruction permit;

(b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of [section 2], whether or not the person holds a valid driver's license; and

(c) a nonresident's similarly restricted driving privilege.

~~(28)~~*(31)* "Manufactured home" has the meaning provided in 15-24-201.

~~(29)~~*(32)* "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

~~(30)~~*(33)* "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

~~(31)~~*(34)* (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

~~(32)~~*(35)* "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

~~(33)~~*(36)* "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

~~(34)~~*(37)* (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(35)~~*(38)* (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

~~(36)~~*(39)* (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

~~(37)~~*(40)* (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

~~(38)~~*(41)* "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(39)~~*(42)* (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(40)~~*(43)* (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; ~~and~~

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9*; and*

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(41)~~*(44)* "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

~~(42)~~*(45)* "Nonresident" means a person who is not a Montana resident.

~~(43)~~*(46)* (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

~~(44)~~*(47)* (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

~~(45)~~*(48)* "Operator" means a person who is in actual physical control of a motor vehicle.

~~(46)~~*(49)* "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

~~(47)~~*(50)* "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

~~(48)~~*(51)* "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(49)~~*(52)* "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

~~(50)~~*(53)* "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(51)~~*(54)* (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

~~(52)~~*(55)* "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

~~(53)~~*(56)* (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

~~(54)~~*(57)* "Recreational vehicle" includes a motor home, travel trailer, or camper.

~~(55)~~*(58)* "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license

plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

~~(56)~~*(59)* "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

~~(57)~~*(60)* "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

~~(58)~~*(61)* "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

~~(59)~~*(62)* "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

~~(60)~~*(63)* "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

~~(61)~~*(64)* (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(62)~~*(65)* "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

~~(63)~~*(66)* "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

~~(64)~~*(67)* "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

~~(65)~~*(68)* "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

~~(66)~~*(69)* "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance

machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

~~(67)~~*(70)* (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(68)~~*(71)* (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(69)~~*(72)* (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(70)~~*(73)* "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

~~(71)~~*(74)* "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(72)~~*(75)* "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(73)~~*(76)* "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

~~(74)~~*(77)* "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(75)~~*(78)* "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(76)~~*(79)* (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(77)~~*(80)* "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

~~(78)~~*(81)* "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(79)~~*(82)* "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(80)~~*(83)* "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(81)~~*(84)* "Under the influence" has the meaning provided in 61-8-401.

~~(82)~~*(85)* "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(83)~~*(86)* "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

~~(84)~~*(87)* (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(85)~~*(88)* "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

~~(86)~~*(89)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(87)~~*(90)* "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 6. Section 61-3-201, MCA, is amended to read:

"61-3-201. Certificate of title required — exclusions. (1) Except as provided in subsection (2), the owner of a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is in this state and for which a certificate of title has not been issued by or an electronic record of title has not been created by the department shall apply to the department, its authorized agent, or a county treasurer for a certificate of title for the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile.

(2) The following motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles are exempt from the requirements of this part:

(a) a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owned by the United States, unless the motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile is registered in this state;

(b) except as required in 61-4-111, a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile that is:

(i) owned by a manufacturer, a dealer, a wholesaler, or an auto auction; and

(ii) held for sale, even though incidentally moved on the highway, used for purposes of testing or demonstration, or used solely by a manufacturer for testing;

(c) a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile owned by a nonresident of this state;

(d) a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile regularly engaged in the interstate transportation of persons or property and:

(i) for which a currently effective certificate of title has been issued in another state or jurisdiction; or

(ii) that is properly registered under the provisions of Title 61, chapter 3, part 7;

(e) a vehicle moved solely by human or animal power;

(f) an implement of husbandry;

(g) special mobile equipment or a motor vehicle or trailer designed and used to apply fertilizer to agricultural land;

(h) a self-propelled wheelchair or tricycle used by a person with a disability;

(i) a dolly or converter gear;

(j) a mobile home or housetrailer; ~~or~~

(k) a manufactured home declared to be an improvement to real property under 15-1-116*; or*

(l) a golf cart unless it is operated by a person with a low-speed restricted driver's license."

Section 7. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) (a) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, a person may not operate a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer upon the public highways of Montana unless the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer is properly registered and has the proper license plates conspicuously displayed on the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer. A license plate must be securely fastened to prevent it from swinging and may not be obstructed from plain view.

(b) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must have a single license plate displayed on the rear of the vehicle. A custom vehicle or street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod. All other motor vehicles must have one license plate displayed on the front and one license plate displayed on the rear of the motor vehicle.

(c) A person may not display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer at the same time a number assigned to it under any motor vehicle law except as provided in this chapter.

(d) A low-speed electric vehicle or a golf cart operated by a person with a low-speed restricted driver's license must have special license plates, as provided in 61-3-332(9), displayed on the front and rear of the vehicle.

(2) A person may not purchase or display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county where the vehicle is domiciled or the county where the trailer, semitrailer, pole trailer, or travel trailer is domiciled at the time of application for registration.

(3) It is unlawful to:

(a) display license plates issued to one motor vehicle, trailer, semitrailer, pole trailer, or travel trailer on any other motor vehicle, trailer, semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of standard license plates including military, veteran, and amateur radio license plates, or any license plates that have been

issued for 5 or more years after the replacement of the license plates is required under 61-3-332(3)(a), except as provided in 61-3-332(3)(c) and (3)(d), 61-3-448, or 61-3-468.

(4) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front bumper and the rear bumper of a motor vehicle equipped with front and rear bumpers, except for a custom vehicle or street rod as provided in subsection (1)(b); or

(b) a clearly visible location on the rear of a trailer, semitrailer, pole trailer, or travel trailer."

Section 8. Section 61-3-312, MCA, is amended to read:

"61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle's registration period following the expiration of the motor vehicle's registration.

(2) Except as provided in subsection (4), a person may renew a motor vehicle's registration by submitting full payment for the fees or taxes required under 61-3-303 and ~~61-3-321(12)~~ *61-3-321(13)* to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer may use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify proof of compliance with 61-6-301.

(4) Beginning July 1, 2011, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system.

(5) Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

(6) The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle's registration period and if, beginning July 1, 2011, the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in 61-6-157.

(7) The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

Section 9. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through ~~(19)~~ *(20)*:

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(a) if the vehicle is 4 or less years old, $217;

(b) if the vehicle is 5 through 10 years old, $87; and

(c) if the vehicle is 11 or more years old, $28.

(3) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

(a) if the declared weight is less than 6,000 pounds, $61.25; or

(b) if the declared weight is 6,000 pounds or more, $148.25.

(4) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is $61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

(i) a one-time registration fee of $237.50;

(ii) unless a new set of license plates is being issued, an insurance verification fee of $5, which must be deposited in the account established under 61-6-158; and

(iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, $72; and

(b) 16 feet in length or longer, $152.

(10) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(11) (a) Except as provided in subsections (11)(b) and ~~(14)~~ *(15)*, the one-time registration fee for a snowmobile is $60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of $40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of $20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) (a) The one-time registration fee for a low-speed electric vehicle is $25.

(b) The one-time registration fee for a golf cart that is owned by a person who has or is applying for a low-speed restricted driver's license is $25.

~~(12)~~*(13)* (a) Except as provided in subsection ~~(12)(b)~~ *(13)(b)*, a fee of $10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The $10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of $15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection ~~(12)~~ *(13)* must be deposited in the account established under 61-6-158, except that $2 of the fee imposed in subsection ~~(12)(a)~~ *(13)(a)* must be deposited in the state general fund.

~~(13)~~*(14)* The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520.

~~(14)~~*(15)* Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, ~~or~~

motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411*, or low-speed electric vehicle* is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

~~(15)~~*(16)* A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

~~(16)~~*(17)* Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

~~(17)~~*(18)* The fees imposed by subsections (2) through ~~(11)~~ *(12)* are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

~~(18)~~*(19)* (a) Unless a person exercises the option in subsection ~~(18)(b)~~ *(19)(b)*, an additional fee of $4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department of fish, wildlife, and parks shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection ~~(18)(a)~~ *(19)(a)*. If a written election is made, the fee may not be collected.

~~(19)~~*(20)* For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

~~(20)~~*(21)* This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 10. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration

decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate if, upon renewal of registration under ~~61-3-332~~ *this section*, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until January 1, 2015, and upon payment of the fee required in ~~61-3-321(12)(b)~~ *61-3-321(13)(b)*, a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number

combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series.

Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may *and a low-speed electric vehicle or golf cart operated by a person with a low-speed restricted driver's license as provided in [section 2] must*, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 11. Section 61-5-102, MCA, is amended to read:

"61-5-102. Drivers to be licensed — penalties. (1) (a) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's control more than one valid Montana driver's license at any time.

(b) Except as provided in subsection (1)(c), the penalty for a first violation of this section is a fine of not more than $500, imprisonment for not more than 6 months, or both a fine and imprisonment. The penalty for second and subsequent violations of this section is a fine of not more than $500 and imprisonment for not less than 2 days or more than 6 months.

(c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has not renewed the license as provided in 61-5-111(3)(c) is not subject to the penalties in subsection (1)(b).

(2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(ii) A motorcycle endorsement is not required for the operation of *a low-speed electric vehicle or* a motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and seatbelts.

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial driver's license", and the license bears the proper endorsement for:

(i) the specific vehicle type or types being operated; or

(ii) the passengers or type or types of cargo being transported.

(3) A low-speed restricted driver's license is not valid for the operation of a motor vehicle other than a low-speed electric vehicle or a golf cart.

~~(3)~~*(4)* When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter."

Section 12. Section 61-6-158, MCA, is amended to read:

"61-6-158. Vehicle insurance verification and license plate operating account. (1) There is a vehicle insurance verification and license plate operating account in the state special revenue fund type as provided in 17-2-102.

(2) Fees imposed under 61-3-321(7)(b)(ii) and ~~(12)~~ *(13)*, 61-3-333, 61-3-465(1)(b)(i), 61-3-480(2)(c)(i), or 61-3-562(1)(a)(ii) or established and collected under 61-6-105 must be deposited in the account.

(3) The money in the vehicle insurance verification and license plate operating account must be used by the department to pay costs incurred in or associated with the operation, maintenance, and enhancement of the system established under 61-6-157 and the contract required in 61-3-338 for the manufacture and distribution of license plates by Montana correctional enterprises."

Section 13. Section 61-9-220, MCA, is amended to read:

"61-9-220. Multiple-beam road-lighting equipment. Except as provided in this part, the headlamps or the auxiliary driving lamps or combination of both on a motor vehicle other than a motorcycle, quadricycle, ~~or~~ motor-driven cycle*, or low-speed electric vehicle,* must be ~~so~~ arranged *so* that the driver may select between distributions of light projected to different elevations. The selection can be made automatically, subject to the following limitations:

(1) There must be an uppermost distribution of light, or composite beam, capable of revealing persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(2) There must be a lowermost distribution of light, or composite beam, capable of revealing persons and vehicles at a distance of at least 100 feet ahead. On a straight level road under any condition of loading the high-intensity portion of the beam may not be directed to strike the eyes of an approaching driver.

(3) A motor vehicle, other than a motorcycle, quadricycle, ~~or~~ motor-driven cycle, *or low-speed electric vehicle,* manufactured after January 1, 1956, that has multiple-beam road-lighting equipment must be equipped with a beam indicator that must be lighted whenever the uppermost distribution of light from the headlamps is in use, and may not otherwise be lighted. The indicator must be readily visible without glare to the driver of the vehicle."

Section 14. Section 61-9-432, MCA, is amended to read:

"61-9-432. ~~Medium-speed~~ *Low-speed and medium-speed* electric vehicles — required equipment. ~~A medium-speed electric vehicle~~ *(1)*

Low-speed electric vehicles and medium-speed electric vehicles, as defined in 61-1-101, must be equipped with:

~~(1)~~*(a)* headlamps, front and rear turn signal lamps, taillamps, and stop lamps;

~~(2)~~*(b)* three red reflectors, two of which must be placed on each side as far to the rear of the vehicle as practicable, and one of which must be placed on the rear of the vehicle;

~~(3)~~*(c)* an exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror;

~~(4)~~*(d)* a parking brake;

~~(5)~~*(e)* a windshield that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.205; *and*

~~(6)~~*(f)* a seatbelt assembly that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.209~~; and~~.

~~(7)~~*(2) A medium-speed electric vehicle must be equipped with* a roll bar, roll cage, or crush-proof body design."

Section 15. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 2].

Section 16. Effective date. [This act] is effective January 1, 2012.

Section 17. Grandfather clause. A low-speed electric vehicle or golf cart that meets the definitions provided in 61-1-101 and that was titled and registered under a one-time registration provision as a light vehicle or quadricycle prior to [the effective date of this act] is considered legally titled and registered if operated by a person with a low-speed restricted driver's license.

Approved April 18, 2011

CHAPTER NO. 210

[HB 251]

AN ACT PROVIDING THAT A REAR FLAG VEHICLE ESCORT IS NOT REQUIRED FOR CERTAIN VEHICLES OVER 12 1/2 FEET IN WIDTH EXCEPT IF THE VEHICLE PASSES THROUGH A HAZARDOUS AREA; AND AMENDING SECTION 61-10-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-102, MCA, is amended to read:

"61-10-102. Width — ~~definition~~ *definitions.* (1) Except as provided in subsections (2) and (3), a vehicle, including a bus, unloaded or with load, may not have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay that is moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than

12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flag vehicle escorts unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner.

(b) An implement of husbandry or a vehicle used for hauling hay that exceeds 16 1/2 feet in width and that is traveling on an interstate or a four-lane highway must be followed by a flag vehicle escort.

(c) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

(d) Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial hay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) (a) The width of a recreational vehicle, as defined in 61-1-101, and a camper, as defined in 61-1-101, that is being operated for noncommercial purposes may exceed 102 inches if:

(i) the excess width is attributable to recreational vehicle or camper appurtenances that do not extend beyond the exterior rearview mirrors of the recreational vehicle, the camper, a vehicle being towed by the recreational vehicle, or the motor vehicle providing motive power; and

(ii) the rearview mirrors extend only the distance necessary to provide the appropriate field of view for the vehicle before the recreational vehicle or camper appurtenances are attached.

(b) For the purposes of this section, "recreational vehicle or camper appurtenances" means an awning and its support hardware or any appendage that is intended to be an integral part of the recreational vehicle or camper and that is installed by the manufacturer or dealer.

(4) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

(5) Except as provided in subsections (2)(a) and (2)(b), a rear flag vehicle escort is not required for a vehicle that exceeds 12 1/2 feet in width, that is hauling or towing an implement of husbandry, construction equipment, or forestry equipment, and that is operating under this section or as authorized by special permit issued under 61-10-121 through 61-10-125 if the vehicle is operating at highway speed or with the flow of traffic.

~~(5)~~*(6)* For the purposes of this section, ~~"flag vehicle"~~ *the following definitions apply:*

(a) "Construction equipment" means any vehicle, machine, or attachment designed or adapted for and used in construction, heavy construction, highway construction, and remodeling work.

(b) "Flag vehicle" means a vehicle equipped as required by law or by department of transportation rule to warn or guide vehicular traffic. When not being operated as a flag vehicle, signs must be removed."

Approved April 18, 2011

CHAPTER NO. 211

[HB 288]

AN ACT CLARIFYING THAT THE RESIDENCY OF A CHILD ENROLLED IN SCHOOL WHO IS RESIDING WITH A LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE IS THE RESIDENCE OF THE LEGAL GUARDIAN, CUSTODIAN, OR CARETAKER RELATIVE; CLARIFYING ACTIONS THAT A SCHOOL DISTRICT MAY TAKE WHEN A STUDENT WHO WAS SUBJECT TO FORMAL DISCIPLINARY ACTION AT A PREVIOUS SCHOOL SEEKS TO ENROLL; CLARIFYING THE LANGUAGE OF THE CARETAKER RELATIVE AFFIDAVIT; MAKING FINANCIAL RESPONSIBILITY FOR SPECIAL EDUCATION CONSISTENT WITH OTHER PROVISIONS REGARDING RESIDENCY; AMENDING SECTIONS 1-1-215, 20-5-321, 20-5-502, 20-5-503, AND 20-7-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-215, MCA, is amended to read:

"1-1-215. Residence — rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may be only one residence. If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

(3) A residence cannot be lost until another is gained.

(4) The residence of an unmarried minor is:

(a) the residence of the minor's parents;

(b) if one of the parents is deceased or the parents do not share the same residence, the residence of the parent having legal custody;

(c) if neither parent has legal custody, the residence of the ~~parent with whom the minor customarily resides~~ *legal guardian or custodian appointed by a court of competent jurisdiction*; or

(d) if the conditions in 20-5-502 are met, ~~the last-known residence of the parent with whom the minor normally resided immediately prior to residing with~~ *the residence of* the caretaker relative.

(5) In the case of a controversy, the district court ~~may declare~~ *has jurisdiction over* which ~~parental~~ residence is the residence of an unmarried minor.

~~(6) Except as provided in Title 20, chapter 5, part 5, the residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or that of the minor's guardian.~~

(6) Except as provided in Title 20, chapter 5, part 5, and this section, the residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or an act of the minor's guardian.

(7) The residence can be changed only by the union of act and intent."

Section 2. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval — tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation;

(b) (i) the child resides in a location where, because of geographic conditions between the child's home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of

elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c) may continue to attend the elementary school after the other child has left the high school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; *or*

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state~~; or~~.

~~(f) the child is residing with a caretaker relative who wants to enroll the child pursuant to 20-5-502.~~

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent, a guardian, the trustees of the district of residence, or a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of attendance shall:

(a) notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days; and

(b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 3. Section 20-5-502, MCA, is amended to read:

"20-5-502. Enrollment by caretaker relative — residency — affidavit. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may, in accordance with this section, enroll the child in school using the rules of residence provided in 1-1-215 if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

(b) the child is residing with the caretaker relative on a full-time basis;

(c) the caretaker relative is unable to contact either of the parents ~~following the~~ *after the parents* ~~voluntary~~ *voluntarily* ~~leaving~~ *leave* ~~of~~ the child with the *caretaker* relative or ~~the~~ *a* parent ~~or parents~~ whom the *caretaker* relative is able to contact ~~refuse~~ *is unable or unwilling* to regain custody of the child ~~after a written or oral request by the relative to do so~~;

(d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the educational needs of the child; and

(e) a caretaker relative educational authorization affidavit is completed in compliance with 20-5-503.

(2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may enroll the child in school unless the child's residency with the caretaker relative is primarily for the purpose of:

(a) attending a particular school; or

(b) participating in athletics at a particular school.

(3) ~~If~~ *If* the child was subject to formal disciplinary action, including suspension or expulsion, at the child's previous school, the school *district* in which the ~~child is to be enrolled~~ *caretaker relative seeks to enroll the child may either implement the previous school district's disciplinary action without further due process or hold a hearing and determine whether the student's conduct in the previous school district merits denial of enrollment. If the district decides to enroll the child, then the school district* may require the child to comply with a behavior contract as a condition of enrollment.

(4) The school district may require additional reasonable evidence that the caretaker relative lives at the address provided in the affidavit."

Section 4. Section 20-5-503, MCA, is amended to read:

"20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.

(3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a caretaker relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may

require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A public or private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section and who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be.

(b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.

(5) A person who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) the end of the first school year after delivery of the affidavit to a school district;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S

EDUCATIONAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by 20-5-503, MCA.

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency laws, to take advantage of a particular academic

program or athletic activity, to circumvent a disciplinary action of a previous school, or for an otherwise unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

[ ] A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

[ ] The child is now residing with me on a full-time basis.

~~[ ] I am unable to locate or contact the parents of the child at this time to notify the parents of my intended authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the parents do so.~~

[ ] No adequate provision, such as appointment of a *legal custodian or* guardian ~~ad litem~~ or execution of a *notarized* power of attorney, has been made for enrollment of the child in school, other educational services, or educationally related medical services.

5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this .... day of ....., 20....

.....

(Signature of caretaker relative)

.....

(Signature, county, state, and seal of notary public)

7. NOTICES *TO CARETAKER RELATIVE*:

a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is effective until the earlier of:

i. the end of the first school year after delivery of the affidavit to a school district;

ii. revocation by the caretaker relative; or

iii. the child no longer resides with the caretaker relative.

~~8. ADDITIONAL INFORMATION:~~

~~a.~~*d.* ~~TO CARETAKER RELATIVES:~~ If the child stops living with you, you shall notify anyone to whom you have given this affidavit~~, as well as anyone who received the affidavit from someone else~~.

~~b. TO PUBLIC AND PRIVATE SCHOOL OFFICIALS AND PUBLIC AND PRIVATE HEALTH CARE PROVIDERS:~~

~~(1) A public or private school official or a public school district official may require additional reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.~~

~~(2) A public or private entity or individual who acts in good faith reliance upon a caretaker relative educational authorization affidavit to enroll a child in school or to provide educational services or educationally related medical care,~~

or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on an affidavit completed in compliance with 20-5-503, MCA."

Section 5. Section 20-7-420, MCA, is amended to read:

"20-7-420. Residency requirements — financial responsibility for special education. (1) Except for a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215.~~, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.~~

(2) The superintendent of public instruction is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed in a foster care or group home licensed by the state. The superintendent of public instruction is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed $500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved April 18, 2011

CHAPTER NO. 212

[HB 300]

AN ACT REVISING LABOR LAWS; PROVIDING THAT THE WORKDAY FOR UNDERGROUND MINERS, SMELTER WORKERS, AND EMPLOYEES AT STRIP MINES, CEMENT PLANTS, AND QUARRIES MAY NOT EXCEED 8 HOURS A DAY UNLESS THE EMPLOYER AND EMPLOYEE AGREE TO A

WORKDAY OF MORE THAN 8 HOURS; REVISING PENALTIES; AND AMENDING SECTIONS 39-4-103, 39-4-104, 39-4-107, AND 39-4-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-4-103, MCA, is amended to read:

"39-4-103. Underground miners and smelter workers. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, ~~is~~ *may not exceed* 8 hours a day~~, except in cases of emergency when life and property are in imminent danger~~ *unless the employer and employee agree to a workday of more than 8 hours:*

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by mutual agreement when a collective bargaining unit is not recognized.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals ~~is~~ *may not exceed* 8 hours a day~~, except in cases of emergency when life or property is in imminent danger~~ *unless the employer and employee agree to a workday of more than 8 hours:*

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by mutual agreement when a collective bargaining unit is not recognized.

(3) A person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction for each offense is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not ~~less than 1 month or~~ more than ~~7~~ *6* months, or both."

Section 2. Section 39-4-104, MCA, is amended to read:

"39-4-104. Strip mining. (1) For the purpose of this section, "strip mining" ~~is defined as~~ *means* the removal of the overburden and coal or other materials from the ground and all of the operations pertaining ~~thereto~~ *to the removal*, without the necessity of providing timbers for ~~the~~ holding ~~of said~~ *the* ground in place.

(2) ~~A~~ *The* period of *employment may* not *exceed* ~~more than~~ 8 hours *a day* ~~will constitute a day's labor of all~~ *for* employees working in strip mining~~, except in cases of emergencies for the protection of life or property when same is in danger~~ *unless the employer and employee agree to a workday of more than 8 hours:*

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by mutual agreement when a collective bargaining unit is not recognized.

(3) Any person, company, corporation, or lessee of ~~the same~~ *a strip mine* ~~who shall violate~~ *that violates* the provisions of this section shall upon conviction be punished by a fine of not less than $50 or more than $600 or by imprisonment of not ~~less than 30 days or~~ more than ~~7~~ *6* months*,* or both ~~such fine and imprisonment~~. Each ~~and every~~ day that ~~such~~ *the* person, company, corporation, or lessee ~~may continue~~ *continues* to violate the provisions of this section ~~shall~~ *must* be considered a separate and distinct offense and ~~shall~~ be punished as such."

Section 3. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments~~,~~ *and* school districts~~, mines, mills, and smelters~~. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county

government, the state government, or a first-class school district, on all contracts let by them, and for all janitors, ~~(~~except in courthouses of ~~sixth-~~*sixth-class* and seventh-class counties~~)~~, engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by a municipal, county, or state government or first-class school district. ~~A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal.~~ This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. An employee may not be required to work in excess of 8 hours in any one workday if the employee ~~prefers not to~~ *is opposed to working more than 8 hours*.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by ~~the~~ mutual agreement ~~of the employer and employee~~ when a bargaining unit is not recognized."

Section 4. Section 39-4-109, MCA, is amended to read:

"39-4-109. Cement plants and quarries. (1) *(a)* ~~A~~ *The* period of *employment may not exceed* 8 hours *a day* ~~shall constitute a day's work, except in cases of emergency where life and property are in imminent danger,~~ for ~~all~~ persons employed in or about cement plants and at quarries *unless the employer and employee agree to a workday of more than 8 hours:*

(i) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(ii) by mutual agreement when a collective bargaining unit is not recognized.

(b) Collective bargaining agreements covering cement plants and associated quarries that propose to extend the employment period beyond 8 hours a day must contain provisions that delineate the specific hours of work or other allowable situations agreed upon by the employer and the collective bargaining agent.

(2) Any person, corporation, agent, manager, or employer ~~who shall violate any of the provisions~~ *that violates a provision* of this section ~~shall be~~ *is* guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not ~~less than 30 days or~~ more than ~~7~~ *6* months, or ~~by~~ both ~~such fine and imprisonment~~."

Approved April 18, 2011

CHAPTER NO. 213

[HB 352]

AN ACT ALLOWING THE USE OF BOTTLED WATER FOR A PUBLIC WATER SYSTEM TO ACHIEVE COMPLIANCE WITH A MAXIMUM CONTAMINANT LEVEL FOR NITRATE; AMENDING SECTION 75-6-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6-107, MCA, is amended to read:

"75-6-107. Variances and exemptions. *(1)* ~~The~~ *Except as provided in subsection (3), the* department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the board.

(2) ~~A~~ *Except as provided in subsection (3), a* variance or exemption granted pursuant to this section ~~shall~~ *must* be accompanied by a compliance plan specifying a time schedule for compliance.

(3) The department may grant for a period of up to 5 years a variance or exemption for a public water system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance or exemption must include the requirement that the owner of the public water system warn the public that the tap water is not potable and could pose a health risk if consumed by:

(a) posting signs at locations required by the variance or exemption for the period granted by the variance or exemption; and

(b) delivering annual notices as required by the variance or exemption to users of the public water system.

(4) A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2011

CHAPTER NO. 214

[HB 380]

AN ACT GENERALLY REVISING WATER AND SEWER LAWS; REVISING THE METHOD OF ESTABLISHING THE MONTHLY SALARY FOR A MEMBER OF THE BOARD OF DIRECTORS OF A COUNTY WATER AND SEWER DISTRICT; PROVIDING THAT A BOARD MEMBER MAY RECEIVE A CERTAIN SALARY IF PROPOSED BY THE PRESIDENT OF THE BOARD AND APPROVED BY THE MEMBERS OF THE DISTRICT; CLARIFYING THE DUTIES OF BOARD PRESIDENTS; AUTHORIZING A VOTE ON THE MONTHLY SALARY OF BOARD MEMBERS; PROVIDING CRITERIA FOR DETERMINING A VACANCY ON A WATER AND SEWER DISTRICT BOARD; ELIMINATING DATE REQUIREMENTS FOR SUBMITTING WATER AND SEWER DISTRICT ASSESSMENTS TO THE CLERK AND RECORDER; REPEALING PROCEDURES FOR CHALLENGING MUNICIPAL SEWER SYSTEM RATES BY FILING A COMPLAINT WITH THE PUBLIC SERVICE COMMISSION; ELIMINATING PUBLIC SERVICE COMMISSION REGULATION OF MUNICIPAL SEWER AND WATER

SYSTEMS AND RATES; AMENDING SECTIONS 7-3-4302, 7-13-2225, 7-13-2262, 7-13-2272, 7-13-2273, 7-13-2282, 7-13-4312, 69-3-101, AND 76-3-103, MCA; REPEALING SECTIONS 7-13-4208 AND 7-13-4310, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Vacancies. A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

(1) death;

(2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;

(3) resignation;

(4) removal from office;

(5) neglect or refusal to perform the duties required by this part for 3 consecutive months, except when prevented by sickness or when absent from the district by permission of the board of directors;

(6) conviction of a felony or a violation of official duties; or

(7) the decision of a court declaring the incumbent's election or appointment void.

Section 2. Section 7-3-4302, MCA, is amended to read:

"7-3-4302. Construction. (1) Except as otherwise provided in ~~this part and~~ part 44 *and this part*, all acts*,* ~~and~~ parts of acts*,* and ~~all~~ laws ~~now in force or hereafter enacted~~ relative to municipal corporations are ~~hereby continued~~ in ~~full~~ force ~~and effect~~ and ~~shall be considered and construed as~~ *are* not repealed by ~~this part and~~ part 44 ~~except insofar as the same may be in~~ *and this part unless they* conflict or *are* inconsistent with the provisions of ~~this part and~~ part 44 *and this part*.

(2) ~~This part and part~~ *Part* 44 *and this part* do not repeal or modify Title 69, chapter 3, or 69-4-101, and ~~this part and~~ part 44 *and this part* do not curtail or impair the power or authority of the public service commission~~, and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance, or other action authorized by this part or part 44 in conflict with any such order, regulation, or action of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under this part and part 44 to be made to the public service commission shall conform to the fiscal year of the city or town~~."

Section 3. Section 7-13-2225, MCA, is amended to read:

"7-13-2225. Combination of elections. (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, ~~and~~ the election on incurring ~~a~~ bonded indebtedness*, and, if applicable, the vote on the proposed monthly salary for members of the board of directors* so that the electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election ~~shall~~ *must* contain the names of the candidates*,* ~~and~~ the details concerning the bonded indebtedness*, and, if applicable, the proposed monthly salary for members of the board of directors as provided in 7-13-2273.*

(3) Candidates for the office of director shall be nominated in the manner required by 7-13-2241 and 7-13-2246."

Section 4. Section 7-13-2262, MCA, is amended to read:

"7-13-2262. Insufficient candidates — vacancies on board of directors — appointment of entire board. (1) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board of directors shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of directors shall make an appointment to fill the position and the term is the same as if the director were elected.

(2) *(a)* Except as provided in subsections (3) and (4), any vacancy in the board of directors, whether the vacant office is elective or appointive, must be filled by the remaining directors.

(b) A vacancy must be determined in accordance with [section 1].

(3) If there are no directors remaining on the board and no nominees for any director position to be elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of each county with territory included in the district shall jointly appoint the directors. The county commissioners shall stagger the terms of the directors appointed.

(4) If the boundaries of the district include any municipality or municipalities and a new board must be appointed as provided in subsection (3), the board shall include one additional director to be appointed by the mayor of the municipality for which the additional director is allowed.

(5) Following the appointment of a board in accordance with subsection (3), the directors must be elected as provided in this part."

Section 5. Section 7-13-2272, MCA, is amended to read:

"7-13-2272. Duties of board president. *(1)* The president shall sign all contracts on behalf of the district and perform ~~such~~ other duties as may be imposed by the board of directors.

(2) The president may propose a monthly salary in excess of the amounts provided in 7-13-2273(2) for the members of the board of directors. The proposed monthly salary must be approved by the voters in the district pursuant to 7-13-2273."

Section 6. Section 7-13-2273, MCA, is amended to read:

"7-13-2273. Compensation of members of board — *approval by voters of district.* *(1)* Each of the members of the board of directors ~~shall~~ *may* receive a monthly salary. ~~that may not exceed the following amounts:~~

~~(1) $60 in districts with a population of no more than 500 persons;~~

~~(2) $80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and~~

~~(3) $100 in districts with a population of more than 5,000 persons.~~

(2) Except as provided in subsection (3), a salary may not exceed the following amounts:

(a) $60 in districts with a population of no more than 500 persons;

(b) $80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and

(c) $100 in districts with a population of more than 5,000 persons.

(3) A salary may exceed the amounts provided under subsection (2) if the salary is in an amount proposed by the president of the board and approved by one of the following methods:

(a) an affirmative vote of the majority of the votes cast by the qualified voters of the district in an election held either by mail ballot, as provided in Title 13, chapter 19, or in conjunction with a regular or primary election; or

(b) an affirmative vote of the majority of the qualified voters of the district who are present and voting at an annual organizational meeting of the district.

(4) A newly elected member of the board of directors must receive the monthly salary, if any, established for the board member position at the time that the member was elected.

(5) A vote on the question of the proposed salary for members of the board of directors may be held in combination with the elections provided in 7-13-2225 if the vote is conducted by mail ballot or held in conjunction with a regular or primary election.

(6) (a) Notice of the vote on the proposed monthly salary for the members of the board of directors must be provided to the members of the district and state the following:

(i) the date on which the vote will be held;

(ii) the manner in which the vote will be held;

(iii) the amount of the proposed monthly salary for the members of the board of directors; and

(iv) any other information regarding the vote that may be necessary.

(b) The notice must be published as provided in 13-1-108.

(7) For purposes of this section, "qualified voters of the district" means the voters qualified to vote on the question of the creation of the district as provided in 7-13-2212."

Section 7. Section 7-13-2282, MCA, is amended to read:

"7-13-2282. Hearing on assessment. (1) At the time fixed, the board of directors shall meet and hear all objections and for that purpose may adjourn from day to day.

(2) The board of directors may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the secretary, must be delivered to the county clerk and recorder of the county in which the lot, tract, or parcel is located within 2 days after passage of the resolution ~~and not later than July 15 preceding the county's next fiscal year~~.

(3) At any time within 30 days after the date of the first publication of the notice of proposed assessments, any owner of property to be assessed for the costs of making the improvements may make written protest against the levy of assessments. The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property except as provided in 7-13-2290. The protest must be delivered to the secretary of the district not later than 5 p.m. of the last day of the 30-day period provided for in this subsection. The secretary shall endorse the date and hour of receipt on the protest.

(4) If the board of directors finds that a protest with respect to the method or methods of assessment described in the resolution is made by the owners of property in the district to be assessed for more than 50% of the cost of improvements, the board of directors may not use the method or methods of

assessment described in the resolution. A protest does not bar the board of directors from adopting subsequent resolutions pursuant to 7-13-2280, using a different method of assessment, and levying the assessments following notice and hearing as provided in 7-13-2281 and this section or, not less than 6 months after the receipt of sufficient protests, instituting proceedings under 7-13-2280, 7-13-2281, and this section proposing the same method of assessment."

Section 8. Section 7-13-4312, MCA, is amended to read:

"7-13-4312. Authorization to furnish water and sewer services to persons located outside municipality. ~~The city council of any city within Montana~~ *A city council* that owns and operates a municipal water system*,* ~~and/or~~ a municipal sewer system*, or both,* to furnish water and sewer services to the inhabitants of ~~such~~ *a* city as a public utility ~~shall, in addition to all other powers, have power to~~ *may* furnish water from ~~such~~ *the* water system and sewage services from ~~such~~ *the* sewer system to the inhabitants or to any person, factory, industry, or producer of farm or other products located outside of the corporate limits of ~~such~~ *the* city at reasonable rates filed by the city or town council ~~and approved, when otherwise required by statute, by the public service commission~~. ~~Such~~ *The* city council ~~is further empowered to~~ *may* make collections ~~for furnishing~~ *to provide* water and sewer services in the same manner as collections are made within the corporate limits."

Section 9. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, ~~shall embrace~~ *includes* every corporation, both public and private, company, individual, association of individuals, *and* their lessees, trustees, or receivers appointed by any court ~~whatsoever,~~ that ~~now or hereafter may own, operate, or control~~ *own, operate, or control* any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities~~,~~ *or* towns~~, and villages~~ or elsewhere;

(f) regulated telecommunications service.

(2) The term ~~"public utility"~~ does not include:

(a) privately owned and operated water, sewer, or ~~combination~~ *water and sewer* systems that do not serve the public;

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23;

(c) except as provided in chapter 7, municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44; or

~~(c)~~*(d)* a person exempted from regulation as a public utility as provided in 69-3-111."

Section 10. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23*, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44*.

(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

Section 11. Repealer. The following sections of the Montana Code Annotated are repealed:

7-13-4208. Procedure to challenge rates.

7-13-4310. Role of public service commission unaffected.

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 13, part 22, and the provisions of Title 7, chapter 13, part 22, apply to [section 1].

Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Applicability. The provisions of [section 6] apply to a change in salary occurring after [the effective date of this act].

Approved April 18, 2011

CHAPTER NO. 215

[HB 529]

AN ACT REVISING THE FEES CHARGED BY A COUNTY FOR RECORDING THE LOCATION OF AND ANNUAL LABOR ON CERTAIN MINING CLAIMS; AND AMENDING SECTION 7-4-2631, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2631, MCA, is amended to read:

"7-4-2631. Fees of county clerk. (1) Except as provided in 7-4-2632 and 7-4-2637, the county clerks shall charge, for the use of their respective counties:

~~(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;~~

~~(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:~~

~~(i) for the first mining claim in the affidavit, $3; and~~

~~(ii) for each additional mining claim included in it, 50 cents;~~

~~(e)~~*(a)* for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $5;

~~(d)~~*(b)* for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

~~(e)~~*(c)* for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

~~(f)~~*(d)* for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $2;

~~(g)~~*(e)* for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

~~(h)~~*(f)* for administering an oath with certificate and seal, no charge;

~~(i)~~*(g)* for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

~~(j)~~*(h)* for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;

~~(k)~~*(i)* for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

~~(l)~~*(j)* for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;

~~(m)~~*(k)* for each certified copy of a birth certificate, $5, and for each certified copy of a death certificate, $3;

~~(n)~~*(l)* for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) The county clerks shall charge, for the use of their respective counties, the fee as provided in 7-4-2632 for recording and indexing the following:

(a) each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with the seal affixed; and

(b) each affidavit of annual labor on a mining claim, including a certificate that the instrument has been recorded with the seal affixed.

~~(2)~~*(3)* State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis."

Approved April 18, 2011

CHAPTER NO. 216

[HB 535]

AN ACT REPLACING THE CURRENT MONTANA UNIFORM LIMITED PARTNERSHIP ACT WITH THE MOST RECENT VERSION OF THE UNIFORM LIMITED PARTNERSHIP ACT; AMENDING SECTIONS 35-12-502, 35-12-504, 35-12-505, 35-12-506, 35-12-508, 35-12-509, 35-12-510, 35-12-601, 35-12-602, 35-12-603, 35-12-604, 35-12-605, 35-12-607, 35-12-610, 35-12-701, 35-12-703, 35-12-704, 35-12-705, 35-12-801, 35-12-803, 35-12-901, 35-12-902, 35-12-1001, 35-12-1005, 35-12-1006, 35-12-1103, 35-12-1105, 35-12-1201, 35-12-1202, 35-12-1301, 35-12-1302, 35-12-1307, 35-12-1308, 35-12-1401, 35-12-1402, 35-12-1403, AND 35-12-1404, MCA; AND REPEALING SECTIONS 35-12-503, 35-12-606, 35-12-608, 35-12-609, 35-12-702, 35-12-802, 35-12-804, 35-12-805, 35-12-903, 35-12-904, 35-12-1002, 35-12-1003, 35-12-1004, 35-12-1007, 35-12-1008, 35-12-1101, 35-12-1102, 35-12-1104, 35-12-1203, 35-12-1204, 35-12-1303, 35-12-1304, 35-12-1305, AND 35-12-1306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-12-502, MCA, is amended to read:

"35-12-502. Construction and application. ~~This~~ *In applying and construing this* chapter*, consideration* must be ~~so construed and applied to effect its general purpose to make uniform~~ *given to promote uniformity of* the law with respect to ~~limited partnerships~~ *its subject matter* among states ~~enacting~~ *that enact* it."

Section 2. Section 35-12-504, MCA, is amended to read:

"35-12-504. Definitions. In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate ~~referred to in~~ *required by* 35-12-601~~, as that~~ *. The term includes the* certificate ~~is~~ *as* amended or restated ~~from time to time~~.

(2) "Contribution"*, except in the phrase "right of contribution",* means any ~~cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services that a partner contributes~~ *benefit provided by a person* to a limited partnership *in order to become a partner* in the *person's* capacity as a partner.

~~(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in 35-12-802.~~

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Designated office" means:

(a) with respect to a limited partnership, the office that the limited partnership is required to designate and maintain under Title 35, chapter 7, part 1; and

(b) with respect to a foreign limited partnership, its principal office.

(5) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to 35-12-803(3).

~~(4)~~*(7)* "Foreign limited partnership" means a partnership formed under the laws of ~~any state~~ *a jurisdiction* other than this state and ~~having as partners~~ *required by those laws to have* one or more general partners and one or more limited partners. *The term includes a foreign limited liability partnership.*

~~(5)~~*(8)* "General partner" means*:*

(a) with respect to a limited partnership, a person ~~who has been admitted to a limited partnership as~~ *that:*

(i) becomes a general partner ~~in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner~~ *under 35-12-801; or*

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under [section 96(1) or (2)]; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(9) "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership", means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

~~(6)~~*(10)* "Limited partner" means*:*

(a) with respect to a limited partnership, a person ~~who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement~~ *that:*

(i) becomes a limited partner under 35-12-701; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under [section 96(1) or (2)]; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

~~(7)~~*(11)* "Limited partnership"*, except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership",* ~~and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and~~ *means an entity* having one or more general partners and one or more limited partners *that is formed under this chapter by two or more persons or becomes subject to this chapter under [sections 82 through 94] or [section 96(1) or (2)]. The term includes the agreement as amended.*

~~(8)~~*(12)* "Partner" means ~~any~~ *a* limited partner or general partner.

~~(9)~~*(13)* "Partnership agreement" means the *partners'* agreement, ~~written or, to the extent not prohibited by law,~~ *whether* oral, *implied, in a record,* or ~~both~~ *in any combination*, ~~of the partners as to the affairs of a~~ *concerning the* limited partnership ~~and the conduct of its business~~. *The term includes the agreement as amended.*

~~(10) "Partnership interest" has the meaning specified in 35-12-1101.~~

~~(11)~~*(14)* "Person" means ~~a natural person~~ *an individual*, *corporation, business trust, estate trust,* partnership, limited ~~partnership (domestic or foreign), trust, estate~~ *liability company*, association, *joint venture, government, governmental subdivision, agency or instrumentality,* ~~or~~ *public* corporation*, or any other legal or commercial entity*.

(15) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(16) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Required information" means the information that a limited partnership is required to maintain under 35-12-508.

(19) "Sign" means:

(a) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(b) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

~~(12)~~*(20)* "State" means a state~~, territory, or possession~~ of the United States, the District of Columbia, ~~or the Commonwealth of~~ Puerto Rico*, the United States Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the United States*.

(21) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(22) "Transferable interest" means a partner's right to receive distributions.

(23) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner."

Section 3. Knowledge and notice. (1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if the person:

(a) knows of it;

(b) has received a notification of it;

(c) has reason to know it exists from all of the facts known to the person at the time in question; or

(d) has notice of it under subsection (3) or (4).

(3) A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection (4), the certificate is not notice of any other fact.

(4) A person has notice of:

(a) another person's dissociation as a general partner 90 days after the effective date of an amendment to the certificate of limited partnership that states that the other person has dissociated or 90 days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;

(b) a limited partnership's dissolution 90 days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;

(c) a limited partnership's termination 90 days after the effective date of a statement of termination;

(d) a limited partnership's conversion under [sections 82 through 94] 90 days after the effective date of the articles of conversion; or

(e) a merger under [sections 82 through 94] 90 days after the effective date of the articles of merger.

(5) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(6) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(7) Except as otherwise provided in subsection (8), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person, other than an individual, exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(8) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

Section 4. Section 35-12-505, MCA, is amended to read:

"35-12-505. Name. *(1) The name of a limited partnership may contain the name of any partner.*

~~(1)~~*(2)* The name of each limited partnership ~~as set forth in its certificate of~~ *that is not a* limited *liability* partnership~~:~~

~~(a)~~ must contain the ~~words~~ *phrase* "limited partnership"~~,~~ *or* the abbreviation "l.p."~~,~~ or ~~the designation~~ "lp"~~;~~

~~(b)~~ *and* may not contain the ~~name of a limited partner unless:~~

~~(i) it is also the name of a general partner; or~~

~~(ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;~~

~~(c) may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited partnership is other than a limited partnership; and~~ *phrase "limited liability limited partnership" or the abbreviation "l.l.l.p." or "lllp".*

(3) The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "l.l.l.p." or "lllp" and may not contain the abbreviation "l.p."or "lp".

~~(d)~~*(4) Unless authorized by subsection (5), the name of a limited partnership* must be distinguishable ~~on~~ *in* the ~~record~~ *records of the secretary of state* from*:*

(a) the name of ~~any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership~~ *each person other than an individual incorporated, organized, or authorized to transact business* in this state*; and*

(b) each name reserved under Title 30, chapter 13, part 2, or 35-12-506.

~~(2) The use of a limited partnership's name by another corporation, limited partnership, or limited liability company is governed by 35-1-308.~~

(5) A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with subsection (4). The secretary of state shall authorize use of the name applied for if, as to each conflicting name:

(a) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with subsection (4) and that is distinguishable in the records of the secretary of state from the name applied for;

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(c) the applicant delivers to the secretary of state proof satisfactory to the secretary of state that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

(6) Subject to [section 73], this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority."

Section 5. Section 35-12-506, MCA, is amended to read:

"35-12-506. Reservation of name. (1) The exclusive right to the use of a name *that complies with 35-12-505* may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt ~~that~~ *the* name;

(b) ~~any domestic~~ *a* limited partnership or ~~any~~ *a* foreign limited partnership ~~registered~~ *authorized to transact business* in this state ~~that, in either case, intends~~ *intending* to adopt ~~that~~ *the* name;

(c) ~~any~~ *a* foreign limited partnership intending to ~~register~~ *obtain a certificate of authority to transact business* in this state and ~~to~~ adopt ~~that~~ *the* name; and

(d) ~~any~~ *a* person intending to organize a foreign limited partnership and intending to have it ~~registered~~ *obtain a certificate of authority to transact business* in this state and ~~to~~ adopt ~~that~~ *the* name*;*

(e) a foreign limited partnership formed under the name; or

(f) a foreign limited partnership formed under a name that does not comply with 35-12-505(2) or (3), but the name reserved under this subsection (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with 35-12-505(2) and (3).

~~(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the applicant may not again reserve the name until more than 60 days after the expiration of the last 120-day period for which that applicant had reserved that name. The right to the exclusive use of a name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.~~

(2) A person may apply to reserve a name under subsection (1) by delivering to the secretary of state for filing an application that states the name to be reserved and the subsection of subsection (1) that applies. If the secretary of state finds that the name is available for use by the applicant, the secretary of state shall file a statement of name reservation and thereby reserve the name for the exclusive use of the applicant for a 120 days.

(3) An applicant that has reserved a name pursuant to subsection (2) may reserve the same name for additional 120-day periods. A person having a current reservation for a name may not apply for another 120-day period for the same name until 90 days have elapsed in the current reservation.

(4) A person that has reserved a name under this section may deliver to the secretary of state for filing a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the subsection of subsection (1) that applies to the other person. Subject to [section 20(3)], the transfer is effective when the secretary of state files the notice of transfer."

Section 6. Section 35-12-508, MCA, is amended to read:

"35-12-508. ~~Records to be kept~~ *Required information.* ~~(1) Each~~ *A* limited partnership shall ~~keep at the principal~~ *maintain at its principal* office the following *information*:

~~(a)~~*(1)* a current list ~~of~~ *showing* the full name and last-known ~~business~~ *street and mailing* address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

~~(b)~~*(2)* a copy of the *initial* certificate of limited partnership and all ~~certificates of amendment~~ *amendments to and restatements of the certificate*, together with ~~executed~~ *signed* copies of any powers of attorney ~~pursuant to~~ *under* which any certificate*, amendment, or restatement* has been ~~executed~~ *signed*;

(3) a copy of any filed articles of conversion or merger;

~~(c)~~*(4)* ~~copies~~ *a copy* of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years;

~~(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years; and~~

(5) a copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) a copy of any financial statement of the limited partnership for the 3 most recent years;

(7) a copy of any record made by the limited partnership during the past 3 years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

~~(e)~~*(8)* unless contained in a ~~written~~ partnership agreement *made in a record*, a ~~writing setting out~~ *record stating*:

~~(i)~~*(a)* the amount of cash and a description and statement of the agreed value of the other ~~property or services~~ *benefits* contributed *and agreed to be contributed* by each partner ~~and that each partner has agreed to contribute~~;

~~(ii)~~*(b)* the times at which or ~~the~~ events on the happening of which any additional contributions agreed to be made by each partner are to be made;

~~(iii)~~*(c)* ~~any right of a partner to receive or of a general partner to make distributions to a partner that include a return of all or any part of the partner's contribution~~ *for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity*; and

~~(iv)~~*(d)* any events, upon the happening of which, the limited partnership is to be dissolved and its ~~affairs~~ *activities* wound up.

~~(2) Records kept under this section must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.~~"

Section 7. Section 35-12-509, MCA, is amended to read:

"35-12-509. Nature*, purpose, and duration* of ~~business~~ *entity*. A limited partnership ~~may carry on any business that a partnership without limited~~ *is an entity distinct from its partners'* partners ~~may carry on~~. *A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.*

(2) A limited partnership may be organized under this chapter for any lawful purpose.

(3) A limited partnership has a perpetual duration."

Section 8. Powers. A limited partnership has the power to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

Section 9. Governing law. The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

Section 10. Supplemental principles of law — rate of interest. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in 31-1-106.

Section 11. Effect of partnership agreement — nonwaivable provisions. (1) Except as otherwise provided in subsection (2), the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary a limited partnership's power under [section 8] to sue, be sued, and defend in its own name;

(b) vary the law applicable to a limited partnership under [section 9];

(c) vary the requirements of 35-12-604;

(d) vary the information required under 35-12-508 or unreasonably restrict the right to information under 35-12-705 or [section 38], but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(e) eliminate the duty of loyalty under [section 39], but the partnership agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty if not manifestly unreasonable; and

(ii) specify the number or percentage of partners that may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty;

(f) unreasonably reduce the duty of care under [section 39(3)];

(g) eliminate the obligation of good faith and fair dealing under [sections 31(2) and 39(4)], but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(h) vary the power of a person to dissociate as a general partner under [section 52(1)] except to require that the notice under [section 51(1)] be in a record;

(i) vary the power of a court to decree dissolution in the circumstances specified in 35-12-1202;

(j) vary the requirement to wind up the partnership's business as specified in [section 62];

(k) unreasonably restrict the right to maintain an action;

(l) restrict the right of a partner under [section 91(1)] to approve a conversion or merger or the right of a general partner under [section 91(2)] to consent to an amendment to the certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership; or

(m) restrict rights under this chapter of a person other than a partner or a transferee.

Section 12. Section 35-12-510, MCA, is amended to read:

"35-12-510. Business transactions of partner with the partnership. ~~Except as otherwise provided in the partnership agreement, a~~ *A* partner may

lend money to and transact other business with the limited partnership and~~,~~ ~~subject to other applicable provisions of law,~~ has the same rights and obligations with respect ~~thereto~~ *to the loan or other transaction* as a person ~~who~~ *that* is not a partner."

Section 13. Dual capacity. A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

Section 14. Consent and proxies of partners. Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney-in-fact.

Section 15. Section 35-12-601, MCA, is amended to read:

"35-12-601. ~~Certificate~~ *Formation* of limited partnership — *certificate of limited partnership.* (1) In order ~~to form~~ *for* a limited partnership *to be formed*, a certificate of limited partnership must be ~~executed, must be filed in the office of~~ *delivered to* the secretary of state~~,~~ *for filing*. ~~and~~ *The certificate* must ~~set forth~~ *state*:

(a) the name of the limited partnership*, which must comply with 35-12-505*;

(b) the information required by 35-7-105(1);

(c) the name and the ~~complete~~ business *mailing* ~~street~~ address of each general partner; ~~and~~

(d) whether the limited partnership is a limited liability limited partnership; and

~~(d)~~*(e)* ~~any other matters the general partners, in their sole discretion, determine to include~~ *additional information required by [sections 82 through 94].*

~~(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section.~~

(2) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in [section 11(2)] in a manner inconsistent with that section.

(3) If there has been substantial compliance with subsection (1), subject to [section 20(3)] a limited partnership is formed when the secretary of state files the certificate of limited partnership.

(4) Subject to subsection (2), if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

(a) the partnership agreement prevails as to partners and transferees; and

(b) the filed certificate of limited partnership, statement of dissociation, termination, or change, or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment."

Section 16. Section 35-12-602, MCA, is amended to read:

"35-12-602. Amendments ~~to~~ *or restatement of* certificate ~~— restated certificates~~. (1) ~~A~~ *In order to amend its* certificate of limited partnership, ~~is~~

~~amended by filing a certificate of amendment in the office of~~ *a limited partnership shall deliver to* the secretary of state~~. The certificate must set forth~~ *for filing an amendment or, pursuant to [sections 82 through 94], articles of merger stating*:

(a) the name of the limited partnership;

(b) the date of filing of ~~the~~ *its initial* certificate; and

(c) the ~~amendments~~ *changes the amendment makes* to the certificate *as most recently amended or restated*.

(2) ~~An amendment to a certificate of~~ *A* limited partnership ~~reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events~~ *shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect*:

(a) the admission of a new general partner;

(b) the ~~withdrawal of~~ *dissociation of a person as* a general partner; or

(c) the ~~continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner~~ *appointment of a person to wind up the limited partnership's activities under [section 62(3) or (4)]*.

~~(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement in the certificate was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect.~~

(3) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(a) cause the certificate to be amended; or

(b) if appropriate, deliver to the secretary of state for filing a statement of change pursuant to 35-7-110 or a statement of correction pursuant to [section 21].

(4) A certificate of limited partnership may be amended at any time for any other proper purpose ~~the general partners may determine~~ *as determined by the limited partnership*.

~~(5) A person is not liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) if the amendment is filed within the 30-day period specified in subsection (2).~~

~~(6)~~*(5)* A restated certificate of limited partnership may be ~~executed and filed~~ *delivered to the secretary of state for filing* in the same manner as ~~a certificate of~~ *an* amendment.

(6) Subject to [section 20(3)], an amendment or restated certificate is effective when filed by the secretary of state."

Section 17. Section 35-12-603, MCA, is amended to read:

"35-12-603. ~~Cancellation of certificate~~ *Statement of cancellation.* A ~~certificate of~~ *dissolved* limited partnership ~~must be canceled upon the dissolution and the commencement of winding up of the limited partnership and at any other time there are no remaining limited partners. A certificate of cancellation must be filed in the office of the secretary of state and shall set forth~~ *that has completed winding up may deliver to the secretary of state for filing a statement of cancellation that states*:

(1) the name of the limited partnership;

(2) the date of filing of ~~the~~ *its* certificate of limited partnership; *and*

(3) the reason for filing the certificate of cancellation;

~~(4) the effective date (which must be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and~~

~~(5)~~*(4)* any other information *determined by* the general partners filing the ~~certificate may determine~~ *statement or by a person appointed to [section 62(3) or (4)]*.

(5) Cancellation is effective upon filing with the secretary of state."

Section 18. Section 35-12-604, MCA, is amended to read:

"35-12-604. ~~Execution of certificates~~ *Signing of records.* (1) Each ~~certificate required by 35-12-601 through 35-12-609 to be filed in the office of~~ *record delivered to* the secretary of state *for filing pursuant to this chapter* must be ~~executed~~ *signed* in the following manner:

(a) An initial certificate of limited partnership must be signed by all general partners *listed in the certificate*.

(b) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

~~(b)~~*(c)* ~~Each certificate of~~ *An* amendment *designating as general partner a person admitted under 35-12-1201(3)(b) following the dissociation of a limited partnership's last general partner* must be signed by ~~at least one general partner and by each other general partner who is designated in the certificate as a new general partner~~ *that person*.

~~(c) Each certificate of cancellation must be signed by all general partners.~~

(d) An amendment required by [section 62(3)] following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

(e) Any other amendment must be signed by:

(i) at least one general partner listed in the certificate;

(ii) every other person designated in the amendment as a new general partner; and

(iii) each person that the amendment indicates has dissociated as a general partner unless:

(A) the person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(B) the person has previously delivered to the secretary of state for filing a statement of dissociation.

(f) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and to the extent the restated certificate effects a change under any other subsection of this subsection (1), the certificate must be signed in a manner that satisfies that subsection.

(g) A statement of cancellation must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to [section 62(3) or (4)] to wind up the dissolved limited partnership's activities.

(h) Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.

(i) Articles of merger must be signed as provided in [section 89(1)].

(j) Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate.

(k) A statement by a person pursuant to [section 53(1)(d)] stating that the person has dissociated as a general partner must be signed by that person.

(l) A statement of withdrawal by a person pursuant to 35-12-704 must be signed by that person.

(m) A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.

(n) Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.

(2) Any person may sign ~~a certificate~~ by an attorney-in-fact~~, but any power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission~~ *any record filed pursuant to this chapter*.

~~(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated in the certificate are true.~~"

Section 19. Section 35-12-605, MCA, is amended to read:

"35-12-605. ~~Execution by~~ *Signing and filing pursuant to* judicial ~~act~~ *order.* *(1)* If ~~the persons~~ *a person* required by ~~35-12-604~~ *this chapter* to ~~execute any certificate fail or refuse to~~ *sign a record or deliver a record to the secretary of state for filing does not* do so, any other person ~~who is adversely affected by the failure or refusal~~ *that is aggrieved* may petition the district court to ~~direct the execution of the certificate~~ *order:*

(a) the person to sign the record;

(b) the person to deliver the record to the secretary of state for filing; or

(c) the secretary of state to file the record unsigned. ~~If the court finds that it is proper for the certificate to be executed and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.~~

(2) If the person aggrieved under subsection (1) is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (1) may seek the remedies provided in subsection (1) in the same action in combination or in the alternative.

(3) A record filed unsigned pursuant to this section is effective without being signed."

Section 20. Delivery to and filing of records by secretary of state — effective time and date. (1) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. Unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, if all filing fees have been paid, the secretary of state shall file the record and upon request and payment of a fee:

(a) for a statement of dissociation, send:

(i) a copy of the filed statement to the person that the statement indicates has dissociated as a general partner; and

(ii) a copy of the filed statement to the limited partnership;

(b) for a statement of withdrawal, send:

(i) a copy of the filed statement to the person on whose behalf the record was filed; and

(ii) if the statement refers to an existing limited partnership, a copy of the filed statement to the limited partnership; and

(c) for all other records, send a copy of the filed record to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in 35-7-111 and [section 21], a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

(a) if the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(b) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed; or

(d) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed.

Section 21. Correcting filed record. (1) A limited partnership or foreign limited partnership may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the secretary of state and filed by the secretary of state if at the time of filing the record contained false or erroneous information or was defectively signed.

(2) A statement of correction may not state a delayed effective date and must:

(a) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(b) specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

(c) correct the incorrect information or defective signature.

(3) When filed by the secretary of state, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(a) for the purposes of [section 3(3) and (4)]; and

(b) as to persons relying on the uncorrected record and adversely affected by the correction.

Section 22. Section 35-12-607, MCA, is amended to read:

"35-12-607. Liability for false statement in certificate. *(1)* If ~~any certificate of limited partnership or certificate of amendment, restatement, or cancellation~~ *a record delivered to the secretary of state for filing under this*

chapter and filed by the secretary of state contains ~~a~~ false ~~statement~~ *information*, any person ~~who~~ *that* suffers loss by reliance on the ~~statement~~ *information* may recover damages for the loss from:

~~(1)~~*(a)* ~~any~~ *a* person ~~actually executing the certificate~~ *that signed the record* or ~~causing~~ *caused* another to ~~execute~~ *sign* it on the person's behalf ~~who~~ *and* knew ~~and any general partner who knew or should have known the statement~~ *the information* to be false at the time the ~~certificate was executed~~ *record was signed*; and

~~(2)~~*(b)* ~~any~~ *a* general partner ~~who after the execution of the certificate knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a~~ *that has notice that the information was false when the record was filed or has become false because of changed circumstances if the general partner has notice for a reasonably* sufficient time before the ~~statement was~~ *information is* relied upon to ~~have reasonably enabled that~~ *enable the* general partner to ~~cancel, restate, or amend the certificate or to file a petition for its cancellation, restatement, or amendment under 35-12-605~~ *effect an amendment under 35-12-602, file a petition pursuant to 35-12-605, or deliver to the secretary of state for filing a statement of change pursuant to 35-7-108 or a statement of correction pursuant to [section 21].*

(2) Signing a record authorized or required to be filed under this chapter constitutes an affirmation under the penalties of perjury that the facts stated in the record are true."

Section 23. Certificate of fact. (1) The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of fact for a limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of limited partnership and whether a statement of cancellation has been filed. A certificate of fact must state:

(a) the limited partnership's name;

(b) that it was duly formed under the laws of this state and the date of formation;

(c) whether the secretary of state has administratively dissolved the limited partnership;

(d) whether the limited partnership's certificate of limited partnership has been amended to state that the limited partnership is dissolved;

(e) whether a statement of cancellation been filed by the secretary of state; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(2) The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of fact for a foreign limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, whether the certificate of authority was revoked, and whether a notice of cancellation was filed. A certificate of fact must state:

(a) the foreign limited partnership's name and any alternate name adopted under [section 73(1)] for use in this state;

(b) that it is authorized to transact business in this state;

(c) whether the secretary of state has revoked its certificate of authority and whether a notice of cancellation has been filed; and

(d) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of fact or authorization issued by the secretary of state may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state.

Section 24. Section 35-12-610, MCA, is amended to read:

"35-12-610. Term and renewal of certification. (1) Certification of a *limited partnership or a certificate of authority of a foreign* limited partnership is effective for a term of 5 years from the date of filing or renewal of certification *or the date of issuance of a certificate*. Upon application for renewal of certification on forms furnished by the secretary of state, the certification may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of certification of a limited partnership, the secretary of state shall notify the listed general partner or partners or specified agent of the pending expiration by addressing a notice to the last-known address of the general partner or partners or specified agent.

(3) If the general partner or partners or specified agent ~~fail~~ *fails* to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the certification, the secretary of state shall cancel the certification.

(4) A registration in force on July 1, 1991, expires 5 years from the date of the filing of certification or on July 1, 1992, whichever is later, if renewal of the certification is not effected in the manner provided for in 35-12-610 through 35-12-613.

(5) A certificate of authority in force on July 1, 2011, expires 5 years from the date it was filed or on July 1, 2012, whichever is later, if renewal of certification of authority is not affected as provided in 35-12-610 or [section 25]."

Section 25. Application for renewal of foreign limited partnership certificate of authority — requirements for appointed registered agent. (1) The application for renewal of a certificate of authority of a foreign limited partnership must be executed by the general partners and delivered to the secretary of state.(2) The application must include the following information:

(a) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(b) the information required under 35-7-105; and

(c) the name and business mailing address of each general partner.

Section 26. Section 35-12-701, MCA, is amended to read:

"35-12-701. ~~Admission of~~ *Becoming* limited ~~partners~~ *partner*. ~~(1)~~ A person becomes a limited partner:

~~(a)~~*(1)* ~~at the time the limited partnership is formed; or~~

~~(b) at any later time specified~~ *as provided* in the partnership agreement*;* ~~for becoming a limited partner.~~

~~(2) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:~~

~~(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon~~

(2) as the result of a conversion or merger under [sections 82 through 94]; or

(3) with the ~~written~~ consent of all *the* partners~~; and~~

~~(b) in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power~~."

Section 27. No right or power as limited partner to bind limited partnership. A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

Section 28. Section 35-12-703, MCA, is amended to read:

"35-12-703. ~~Liability to third parties~~ *No liability as limited partner for limited partnership obligations.* ~~(1) Except as provided in subsection (4), a~~ *An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A* limited partner is not *personally* liable*, directly or indirectly, by way of contribution or otherwise,* for ~~the obligations~~ *an obligation* of a limited partnership ~~unless, in addition to the exercise of the rights and powers as~~ *solely by reason of being* a limited partner~~, the limited partner participates in the control of the business. However,~~ *even* if the limited partner participates in the *management and* control of the *limited partnership* ~~business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner~~.

~~(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:~~

~~(a) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;~~

~~(b) consulting with and advising a general partner with respect to the business of the limited partnership;~~

~~(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;~~

~~(d) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;~~

~~(e) requesting or attending a meeting of partners;~~

~~(f) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:~~

~~(i) the dissolution and winding up of the limited partnership;~~

~~(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;~~

~~(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~

~~(iv) a change in the nature of the business;~~

~~(v) the admission or removal of a general partner;~~

~~(vi) the admission or removal of a limited partner;~~

~~(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;~~

~~(viii) an amendment to the partnership agreement or certificates of limited partnership; or~~

~~(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (2)(f) that the partnership states in writing may be subject to the approval or disapproval of limited partners;~~

~~(g) winding up the limited partnership pursuant to 35-12-1203; or~~

~~(h) exercise any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).~~

~~(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.~~

~~(4) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by 35-12-505(1)(b)(i) and (1)(b)(ii), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~"

Section 29. Section 35-12-704, MCA, is amended to read:

"35-12-704. Person erroneously believing *self to be* limited partner ~~status~~. (1) Except as *otherwise* provided in subsection (2), a person ~~who~~ *that* makes ~~a contribution to~~ *an investment in* a business enterprise and erroneously ~~and~~ *but* in good faith believes that the person has become a limited partner in the enterprise ~~is not a general partner in the enterprise and~~ is not ~~bound by its~~ *liable for the* obligations by reason of making the ~~contribution~~ *investment*, receiving distributions from the enterprise, or exercising any rights of *or appropriate to* a limited partner if, on ascertaining the mistake, the person:

(a) causes an appropriate certificate of limited partnership*,* ~~or a certificate of~~ amendment*, or statement of correction* to be ~~executed~~ *signed* and ~~filed~~ *delivered to the secretary of state for filing*; or

(b) withdraws from future ~~equity~~ participation *as an owner* in the enterprise by executing and ~~filing in the office of~~ *delivering to* the secretary of state ~~a certificate declaring~~ *for filing a statement of* withdrawal under this section.

(2) ~~Any~~ *A* person ~~who~~ *that* makes ~~a contribution of the kind~~ *an investment* described in subsection (1) is liable *to the same extent* as a general partner to any third party ~~who transacts business~~ *that enters into a transaction* with the enterprise*, believing in good faith that the person is a general partner,* before the ~~person withdraws and an appropriate~~ *the secretary of state files a statement of withdrawal,* certificate *of limited partnership*, *amendment, or statement of conversion* ~~if any, is filed~~ to show that the person is not a general partner~~;~~.

(3) ~~but in each case only if the third party actually believed~~ *If a person makes a diligent effort* in good faith ~~that the person was a general partner at the time of the transaction~~ *to comply with subsection (1)(a) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subsection (1)(b) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise*."

Section 30. Section 35-12-705, MCA, is amended to read:

"35-12-705. Right *of limited partner and former limited partner* to information. *(1)* ~~Each~~ *On 10 days' demand, made in a record received by the limited partnership, a* limited partner ~~has the right to:~~

~~(1)~~ *may* inspect and copy ~~any of the partnership records required by 35-12-508 to be maintained; and~~ *required information during regular business*

hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(2) *During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may* obtain from the ~~general partners from time to time upon reasonable demand:~~

~~(a)~~ *limited partnership and inspect and copy* true and full information regarding the state of the ~~business~~ *activities* and financial condition of the limited partnership~~;~~

~~(b) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and~~

~~(c) any~~ *and* other information regarding the ~~affairs~~ *activities* of the limited partnership as is just and reasonable~~.~~ *if:*

(a) the limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(b) the limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(c) the information sought is directly connected to the limited partner's purpose.

(3) Within 10 days after receiving a demand pursuant to subsection (2), the limited partnership in a record shall inform the limited partner that made the demand:

(a) the information that the limited partnership will provide in response to the demand;

(b) when and where the limited partnership will provide the information; and

(c) if the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(4) Subject to subsection (6), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office if:

(a) the information pertains to the period during which the person was a limited partner;

(b) the person seeks the information in good faith; and

(c) the person meets the requirements of subsection (2).

(5) The limited partnership shall respond to a demand made pursuant to subsection (4) in the same manner as provided in subsection (3).

(6) If a limited partner dies, 35-12-1105 applies.

(7) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(8) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(9) Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

(10) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (7) or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(11) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner."

Section 31. Limited duties of limited partners. (1) A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(2) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(3) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

Section 32. Section 35-12-801, MCA, is amended to read:

"35-12-801. ~~Admission~~ *Becoming partner.* ~~After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted~~ *A person becomes a general partner:*

(1) as provided ~~in writing~~ in the partnership agreement*:* ~~or, if the partnership agreement does not provide in writing for the admission of additional general partners,~~

(2) under 35-12-1201(3)(b) following the dissociation of a limited partnership's last general partner;

(3) as the result of a conversion or merger under [sections 82 through 94]; or

(4) with the ~~written~~ consent of all *the* partners."

Section 33. General partner as agent of limited partnership. (1) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under [section 3(4)] that the general partner lacked authority.

(2) An act of a general partner that is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

Section 34. Limited partnership liable for general partner's actionable conduct. (1) A limited partnership is liable for loss or injury caused to a person or for a penalty incurred as a result of a wrongful act or omission or other actionable conduct of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(2) If in the course of the limited partnership's activities or while acting with authority of the limited partnership a general partner receives or causes the

limited partnership to receive money or property of a person not a partner and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

Section 35. Section 35-12-803, MCA, is amended to read:

"35-12-803. General ~~powers and~~ *partner's* liabilities. (1) Except as otherwise provided in ~~this chapter and in the partnership agreement~~ *subsections (2) and (3)*, ~~a~~ *all* general ~~partner~~ *partners are liable jointly and severally for all obligations* of ~~a~~ *the* limited partnership ~~has all the rights and powers and is subject to all the restrictions of a partner in a partnership without limited partners~~ *unless otherwise agreed by the claimant or provided by law*.

(2) ~~Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement,~~ *A person that becomes* a general partner of ~~a~~ *an existing* limited partnership ~~has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners~~ *is not personally liable for an obligation of a limited partnership incurred before the person became a general partner*.

(3) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under [section 37(2)(b)]."

Section 36. Actions by and against partnership and partners. (1) To the extent not inconsistent with 35-12-803, a general partner may be joined in an action against the limited partnership or named in a separate action.

(2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership unless the partner is personally liable for the claim under 35-12-803 and:

(a) a judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) the limited partnership is a debtor in bankruptcy;

(c) the general partner has agreed that the creditor need not exhaust limited partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

Section 37. Management rights of general partner. (1) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(2) The consent of each partner is necessary to:

(a) amend the partnership agreement;

(b) amend the certificate of limited partnership to add or, subject to [section 91], delete a statement that the limited partnership is a limited liability limited partnership; and

(c) sell, lease, exchange, or otherwise dispose of all or substantially all of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(3) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(4) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(5) A payment or advance made by a general partner that gives rise to an obligation of the limited partnership under subsection (3) or (4) constitutes a loan to the limited partnership that accrues interest from the date of the payment or advance.

(6) A general partner is not entitled to remuneration for services performed for the partnership.

Section 38. Right of general partner and former general partner to information. (1) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

(a) in the limited partnership's principal office, required information; and

(b) at a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(2) Each general partner and the limited partnership shall furnish to a general partner:

(a) without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and

(b) on demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(3) Subject to subsection (5), on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (1) at the location specified in subsection (1) if:

(a) the information or record pertains to the period during which the person was a general partner;

(b) the person seeks the information or record in good faith; and

(c) the person satisfies the requirements imposed on a limited partner by 35-12-705(2).

(4) The limited partnership shall respond to a demand made pursuant to subsection (3) in the same manner as provided in 35-12-705(3).

(5) If a general partner dies, 35-12-1105 applies.

(6) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(7) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (6) or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(9) The rights under this section do not extend to a person as transferee, but the rights under subsection (3) of a person dissociated as a general may be exercised by the legal representative of an individual who dissociated as a general partner under [section 51(7)(b) or (7)(c)].

Section 39. General standards of general partner's conduct. (1) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections (2) and (3).

(2) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:

(a) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(b) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and

(c) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(3) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

Section 40. Section 35-12-901, MCA, is amended to read:

"35-12-901. Form of contributions. ~~The~~ *A* contribution of a partner ~~may be in cash,~~ *consist of tangible or intangible* property~~,~~ or ~~services rendered or a promissory note or~~ other ~~obligation~~ *benefit to the limited partnership, including money, services performed, promissory notes, other agreements* to contribute cash or property*,* ~~or to perform services~~ *and contracts for services to be performed*."

Section 41. Section 35-12-902, MCA, is amended to read:

"35-12-902. Liability for contributions. (1) ~~A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.~~

~~(2) Except as otherwise provided in the partnership agreement, a partner is liable to the limited partnership for any enforceable promise to contribute cash or property or to perform services regardless of whether the partner is personally unable to perform because of~~ *A partner's obligation to contribute money or other property or other benefit or to perform services for a limited partnership is not excused by the partner's* disability, death, or ~~any~~ other ~~reason~~ *inability to perform personally*.

(2) If a partner does not make ~~the required~~ *a promised nonmonetary* contribution ~~of property or services~~, the partner is obligated at the option of the limited partnership to contribute ~~cash~~ *money* equal to that portion of the value, as stated in the ~~partnership records required to be kept pursuant to 35-12-508~~ *required information*, of the stated contribution that has not been made.

(3) ~~Unless otherwise provided in the partnership agreement, the~~ *The* obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all of the partners. ~~Notwithstanding a compromise so authorized, a~~ *A* creditor of a limited partnership ~~who~~ *that* extends credit or otherwise acts in reliance on ~~that~~ *an* obligation *described in subsection (1),* ~~after the partner signs a writing that, in either case, reflects the obligation and before the amendment or cancellation to reflect the~~ *without notice of any* compromise *under this subsection,* may enforce the ~~precompromise~~ *original* obligation."

Section 42. Sharing of distributions. A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

Section 43. Section 35-12-1001, MCA, is amended to read:

"35-12-1001. Interim distributions. ~~Except as otherwise provided in 35-12-1001 through 35-12-1008, a~~ *A* partner ~~is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and~~ *does not have a right to any distribution* before the dissolution and winding up ~~to the extent and at the times or on the happening of the events specified in the partnership agreement~~ *of the limited partnership unless the limited partnership decides to make an interim distribution*."

Section 44. No distribution on account of dissociation. A person does not have a right to receive a distribution on account of dissociation.

Section 45. Section 35-12-1005, MCA, is amended to read:

"35-12-1005. Distributions in kind. ~~Except as provided in writing in the partnership agreement, a~~ *A* partner~~, regardless of the nature of the partner's contribution, has no~~ *does not have a* right to demand ~~and~~ *or* receive any

distribution from a limited partnership in any form other than cash. ~~Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any~~ *Subject to [section 68(2)], a limited partnership may distribute an* asset in kind ~~from a limited partnership~~ to the extent that ~~the percentage of the asset distributed to the~~ *each* partner ~~exceeds~~ *receives* a percentage of ~~that~~ *the* asset ~~that is~~ equal to the ~~percentage in which the partner shares in~~ *partner's share of* distributions ~~from the limited partnership~~."

Section 46. Section 35-12-1006, MCA, is amended to read:

"35-12-1006. Right to distributions. ~~At the time~~ *When* a partner *or transferee* becomes entitled to receive a distribution, the partner *or transferee* has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution. *However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.*"

Section 47. Limitations on distribution. (1) A limited partnership may not make a distribution in violation of the partnership agreement.

(2) A limited partnership may not make a distribution if after the distribution:

(a) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

(b) the limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

(3) A limited partnership may base a determination that a distribution is not prohibited under subsection (2) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(4) Except as otherwise provided in subsection (7), the effect of a distribution under subsection (2) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt is incurred by the limited partnership; and

(b) in all other cases, as of the date:

(i) the distribution is authorized if the payment occurs within 120 days after that date; or

(ii) the payment is made if payment occurs more than 120 days after the distribution is authorized.

(5) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(6) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (2) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(7) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

Section 48. Liability for improper distributions. (1) A general partner that consents to a distribution made in violation of [section 47] is personally liable to the limited partnership for the amount of the distribution that exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with [section 39].

(2) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of [section 47] is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under [section 47].

(3) A general partner against which an action is commenced under subsection (1) may:

(a) implead in the action any other person that is liable under subsection (1) and compel contribution from the person; and

(b) implead in the action any person that received a distribution in violation of subsection (2) and compel contribution from the person in the amount the person received in violation of subsection (2).

(4) An action under this section is barred if it is not commenced within 2 years after the distribution.

Section 49. Dissociation as limited partner. (1) Except as provided in subsection (2), a person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(2) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(a) the limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(b) an event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(c) the person's expulsion as a limited partner pursuant to the partnership agreement;

(d) the person's expulsion as a limited partner by the unanimous consent of the other partners if:

(i) it is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(ii) there has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(iii) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(e) on application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(i) the person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(ii) the person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under [section 31(2)]; or

(iii) the person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities with the person as a limited partner;

(f) in the case of a person who is an individual, the person's death;

(g) in the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(h) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(i) termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(j) the limited partnership's participation in a conversion or merger under [sections 82 through 94] if the limited partnership:

(i) is not the converted or surviving entity; or

(ii) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

Section 50. Effect of dissociation as limited partner. (1) Upon a person's dissociation as a limited partner:

(a) subject to 35-12-1105, the person does not have further rights as a limited partner;

(b) the person's obligation of good faith and fair dealing as a limited partner under [section 31(2)] continues only as to matters arising and events occurring before the dissociation; and

(c) subject to 35-12-1105 and [sections 82 through 94], any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

(2) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a limited partner.

Section 51. Dissociation as general partner. A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

(1) the limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(2) an event agreed to in the partnership agreement as causing the person's dissociation as a general partner;

(3) the person's expulsion as a general partner pursuant to the partnership agreement;

(4) the person's expulsion as a general partner by the unanimous consent of the other partners if:

(a) it is unlawful to carry on the limited partnership's activities with the person as a general partner;

(b) there has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(c) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

(a) the person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(b) the person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under [section 39]; or

(c) the person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) the person's:

(a) becoming a debtor in bankruptcy;

(b) execution of an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(d) failure, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a person who is an individual:

(a) the person's death;

(b) the appointment of a guardian or general conservator for the person; or

(c) a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(8) in the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's

entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(10) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

(11) the limited partnership's participation in a conversion or merger under [sections 82 through 94] if the limited partnership:

(a) is not the converted or surviving entity; or

(b) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

Section 52. Person's power to dissociate as general partner — wrongful dissociation. (1) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to [section 51(1)].

(2) A person's dissociation as a general partner is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) it occurs before the termination of the limited partnership and:

(i) the person withdraws as a general partner by express will;

(ii) the person is expelled as a general partner by judicial determination under [section 51(5)];

(iii) the person is dissociated as a general partner by becoming a debtor in bankruptcy; or

(iv) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to [section 77], to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

Section 53. Effect of dissociation as general partner. (1) Upon a person's dissociation as a general partner:

(a) the person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;

(b) the person's duty of loyalty as a general partner under [section 39(2)(c)] terminates;

(c) the person's duty of loyalty as a general partner under [section 39(2)(a) and (2)(b)] and duty of care under [section 39(3)] continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(d) the person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership that states that the person has dissociated; and

(e) subject to 35-12-1105 and [sections 82 through 94], any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(2) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a general partner.

Section 54. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner. (1) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under [sections 8 through 94], or merged out of existence under [sections 82 through 94], the limited partnership is bound by an act of the person only if:

(a) the act would have bound the limited partnership under [section 33] before the dissociation; and

(b) at the time the other party enters into the transaction:

(i) less than 2 years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(2) If a limited partnership is bound under subsection (1), the person dissociated as a general partner that caused the limited partnership to be bound is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (1); and

(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Section 55. Liability to other persons of person dissociated as general partner. (1) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (2) and (3), the person is not liable for a limited partnership's obligation incurred after dissociation.

(2) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under 35-12-803 on an obligation incurred by the limited partnership under [section 63].

(3) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

(a) a general partner would be liable on the transaction; and

(b) at the time the other party enters into the transaction:

(i) less than 2 years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(4) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

(5) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

Section 56. Partner's transferable interest. The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property.

Section 57. Transfer of partner's transferable interest. (1) A transfer, in whole or in part, of a partner's transferable interest:

(a) is permissible;

(b) does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and

(c) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (3), or to inspect or copy the required information or the limited partnership's other records.

(2) A transferee has a right to receive, in accordance with the transfer:

(a) distributions to which the transferor would otherwise be entitled; and

(b) upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

(3) In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

(4) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(5) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(6) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(7) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under 35-12-902 and [section 48]. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

Section 58. Section 35-12-1103, MCA, is amended to read:

"35-12-1103. Rights of creditors *of partner or transferee*. *(1)* On ~~due~~ application to a court of competent jurisdiction by any judgment creditor of a partner *or transferee*, the court may charge the ~~partnership~~ *transferable* interest of the ~~partner~~ *judgment debtor* with payment of the unsatisfied amount of the judgment ~~debt~~, with interest. To the extent charged, the judgment creditor has only the rights of ~~an assignee of the partnership interest~~ *a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries that the judgment debtor might have made or that the circumstances of the case may require to give effect to the charging order.*

(2) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) by the judgment debtor;

(b) with property other than limited partnership property, by one or more of the other partners; or

(c) with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(4) This chapter does not deprive any partner *or transferee* of the benefit of any exemption laws applicable to the partner's *or transferee's transferable* partnership interest.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest."

Section 59. Section 35-12-1105, MCA, is amended to read:

"35-12-1105. Power of estate of deceased ~~or incompetent~~ partner. If a partner ~~who is a natural person~~ dies, ~~or a court of competent jurisdiction adjudges that partner to be incompetent to manage the partner's person or property,~~ the *deceased* partner's personal representative, ~~guardian, conservator,~~ or other legal representative may exercise ~~all of~~ the ~~partner's~~ rights *of a transferee as provided in [section 57] and,* for the purpose of settling the ~~partner's~~ estate, ~~or administering the partner's property, including any power the partner had to give an assignee the right to become~~ *may exercise the rights of* a *current* limited partner *under 35-12-705.* ~~If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner.~~"

Section 60. Section 35-12-1201, MCA, is amended to read:

"35-12-1201. Nonjudicial dissolution. A *Except as otherwise provided in 35-12-1201, a* limited partnership is dissolved and its affairs ~~must~~ *may* be wound up ~~on~~ *only upon* the occurrence of ~~the first~~ of *any* the following:

(1) ~~at the time or~~ on the happening of ~~the events~~ *an event* specified ~~in writing~~ in the partnership agreement;

(2) ~~on~~ the ~~unanimous written~~ consent of all *general* partners *and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective*;

(3) ~~on the happening of an event of withdrawal of~~ *after the dissociation of a person as* a general partner*:*

(a) ~~unless at the time there is~~ *if the limited partnership has* at least one ~~other~~ *remaining* general partner, ~~and the written provisions of the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and the remaining general partner does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if,~~ *the consent to dissolve the limited partnership given* within 90 days after the ~~withdrawal, all~~ *dissociation by* partners ~~agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired~~ *owning a majority of the rights to receive distributions as partners at the time the consent is to be effective*; or

(b) if the limited partnership does not have a remaining general partner, the filing of the dissolution with the secretary of state unless before the end of the period:

(i) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) at least one person is admitted as a general partner in accordance with the consent;

(4) ~~on entry of a decree of judicial dissolution in accordance with 35-12-1202~~ *the passage of 90 days after the dissociation of the limited partnership's last limited partner unless before the end of the period the limited partnership admits at least one limited partner; or*

(5) the signing and filing of a declaration of dissolution by the secretary of state."

Section 61. Section 35-12-1202, MCA, is amended to read:

"35-12-1202. ~~Dissolution by decree of court~~ *Judicial resolution.* On application by ~~or for~~ a partner, the district court may ~~decree a~~ *order* dissolution of a limited partnership ~~whenever~~ *if* it is not reasonably practicable to carry on the ~~business~~ *activities of the limited partnership* in conformity with the partnership agreement."

Section 62. Winding up. (1) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(2) In winding up its activities, the limited partnership:

(a) may amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of cancellation as provided in 35-

12-603, and perform other necessary acts; and

(b) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

(a) has the powers of a general partner under [section 63]; and

(b) shall promptly amend the certificate of limited partnership to state:

(i) that the limited partnership does not have a general partner;

(ii) the name of the person that has been appointed to wind up the limited partnership; and

(iii) the business mailing address of the person.

(4) On the application of any partner, the district court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities if:

(a) a limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3); or

(b) the applicant establishes other good cause.

Section 63. Power of general partner and person dissociated as general partner to bind partnership after dissolution. (1) A limited partnership is bound by a general partner's act after dissolution that:

(a) is appropriate for winding up the limited partnership's activities; or

(b) would have bound the limited partnership under [section 33] before dissolution if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(2) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(a) at the time the other party enters into the transaction:

(i) less than 2 years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(b) the act:

(i) is appropriate for winding up the limited partnership's activities; or

(ii) would have bound the limited partnership under [section 33] before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

Section 64. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and person dissociated as general partner. (1) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under [section 63(1)] by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(2) If a person dissociated as a general partner causes a limited partnership to incur an obligation under [section 63(2)], the person is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Section 65. Known claims against dissolved limited partnership. (1) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (2).

(2) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

(a) specify the information required to be included in a claim;

(b) provide a mailing address to which the claim is to be sent;

(c) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant;

(d) state that the claim will be barred if not received by the deadline; and

(e) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on 35-12-803.

(3) A claim against a dissolved limited partnership is barred if the requirements of subsection (2) are met and:

(a) the claim is not received by the specified deadline; or

(b) in the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within 90 days after the receipt of the notice of the rejection.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

Section 66. Other claims against dissolved limited partnership. (1) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(2) The notice must:

(a) be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in the county in which the limited partnership's designated office is or was last located;

(b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;

(c) state that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within 5 years after publication of the notice; and

(d) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on 35-12-803.

(3) If a dissolved limited partnership publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within 5 years after the publication date of the notice:

(a) a claimant that did not receive notice in a record under [section 65];

(b) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) against the dissolved limited partnership to the extent of its undistributed assets;

(b) if the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(c) against any person liable on the claim under 35-12-803.

Section 67. Liability of general partner and person dissociated as general partner when claim against limited partnership barred. If a claim against a dissolved limited partnership is barred under [section 65 or 66], any corresponding claim under 35-12-803 is also barred.

Section 68. Disposition of assets — when contributions required. (1) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be

applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(2) Any surplus remaining after the limited partnership complies with subsection (1) must be paid in cash as a distribution.

(3) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (1) with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

(a) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under [section 55] shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) If a person does not contribute the full amount required under subsection (3)(a) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by subsection (3)(a) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(c) If a person does not make the additional contribution required by subsection (3)(b), further additional contributions are determined and due in the same manner as provided in that subsection.

(4) A person that makes an additional contribution under subsection (3)(b) or (3)(c) may recover from any person whose failure to contribute under subsection (3)(a) or (3)(b) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(5) The estate of a deceased individual is liable for the person's obligations under this section.

(6) An assignee for the benefit of creditors of a limited partnership or a partner or a person appointed by a court to represent creditors of a limited partnership or a partner may enforce a person's obligation to contribute under subsection (3).

Section 69. Section 35-12-1301, MCA, is amended to read:

"35-12-1301. ~~Law governing~~ *Governing law*. *(1)* ~~Subject to the constitution and public policy of this state, the~~ *The* laws of the state *or other jurisdiction* under which a foreign limited partnership is organized govern ~~its organization and internal affairs and the liability of its limited partners, and a~~ *relations among the partners of the* foreign limited partnership *and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.*

(2) A foreign limited partnership may not be denied ~~registration~~ *a certificate of authority* by reason of any difference between ~~those~~ *the* laws *of the jurisdiction under which a foreign limited partnership is organized* and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state."

Section 70. Section 35-12-1302, MCA, is amended to read:

"35-12-1302. ~~Registration~~ *Application for certificate of authority.* *(1)* Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

~~(1)~~*(a)* the name of the foreign limited partnership ~~or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable~~ *and, if the name does not comply with 35-12-505, an alternate name adopted pursuant to [section 73(1)]*;

~~(2)~~*(b)* the *name of the* state ~~in which~~ *or other jurisdiction under whose law* the foreign limited partnership *is organized* ~~was formed~~ and the date of the foreign limited partnership's formation;

~~(3)~~*(c)* the ~~name and~~ *business mailing* address of ~~any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint. An agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state.~~ *the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the business mailing address of the required office;*

~~(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if an agent was appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;~~

~~(5)~~*(d)* ~~the address of the office required to be maintained in the state of the foreign limited partnership's organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership~~ *the information required in 35-7-105(1)*;

~~(6)~~*(e)* the name and business *mailing* address of each *of the foreign limited partnership's* general ~~partner~~ *partners*; and

~~(7)~~*(f)* ~~the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by~~ *whether* the foreign limited partnership ~~to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn~~ *is a foreign limited liability limited partnership*.

(2) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import dated within 6 months of its submission signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized."

Section 71. Activities not constituting transacting business. (1) Activities of a foreign limited partnership that do not constitute transacting business in this state within the meaning of [sections 71 through 74] include:

(a) maintaining, defending, and settling an action or proceeding;

(b) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, and maintaining property so acquired;

(i) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and

(j) transacting business in interstate commerce.

(2) For purposes of [sections 71 through 74], the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1), constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

Section 72. Filing of certificate of authority. Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application, shall prepare, sign, and file a certificate of authority to transact business in this state, and shall, upon payment of a fee, send a copy of the filed certificate to the foreign limited partnership or its representative.

Section 73. Noncomplying name of foreign limited partnership. (1) A foreign limited partnership whose name does not comply with 35-12-505 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with 35-12-505. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not comply with Title 30, chapter 13, part 2. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name unless the foreign limited partnership is authorized under Title 30, chapter 13, part 2, to transact business in this state under another name.

(2) If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with 35-12-505, it may not thereafter transact business in this state until it complies with subsection (1) of this section and obtains an amended certificate of authority.

Section 74. Revocation of certificate of authority. (1) A certificate of authority of a foreign limited partnership to transact business in this state may

be revoked by the secretary of state in the manner provided in subsections (2) and (3) if the foreign limited partnership does not:

(a) pay any fee, tax, or penalty due to the secretary of state under this chapter or other law;

(b) appoint and maintain an agent for service of process as required by 35-7-105; or

(c) deliver for filing a statement of a change under 35-7-108 within 30 days after a change has occurred in the name or address of the agent.

(2) In order to revoke a certificate of authority, the secretary of state shall prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this state or, if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's designated office. The notice must state:

(a) the revocation's effective date, which must be at least 60 days after the date the secretary of state sends the copy; and

(b) the foreign limited partnership's failures to comply with subsection (1) that are the reason for the revocation.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection (1) stated in the notice. If the foreign limited partnership cures the failures, the secretary of state shall so indicate on the filed notice.

Section 75. Section 35-12-1307, MCA, is amended to read:

"35-12-1307. ~~Transaction of business without registration~~ *Cancellation of certificate of authority — effect of failure to have certificate.* *(1) In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership shall deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under [section 20].*

~~(1)~~*(2)* A foreign limited partnership transacting business in this state ~~without registration~~ may not maintain ~~any~~ *an* action~~, suit,~~ or proceeding in ~~any court of~~ this state ~~until~~ *unless* it has ~~registered~~ *a certificate of authority to transact business in this state*.

~~(2)~~*(3)* The failure of a foreign limited partnership to ~~register~~ *have a certificate of authority to transact business in* in this state does not impair the validity of any contract or act of the foreign limited partnership ~~and does not~~ *or* prevent the foreign limited partnership from defending any action~~, suit,~~ or proceeding in ~~any court of~~ this state.

~~(3)~~*(4)* A ~~limited~~ partner of a foreign limited partnership is not liable ~~as a general partner~~ *for the obligations* of the foreign limited partnership solely by reason of the foreign limited partnership's ~~transacting~~ *having transacted* business in this state without ~~registration~~ *a certificate of authority*.

~~(4)~~*(5)* ~~A~~ *If a* foreign limited partnership~~, by transacting~~ *transacts* business in this state without ~~registration~~ *a certificate of authority or cancels its certificate of authority, it* appoints the secretary of state as its agent for service of process ~~with respect to claims~~ for ~~relief~~ *rights of action* arising out of the transaction of business in this state."

Section 76. Section 35-12-1308, MCA, is amended to read:

"35-12-1308. Action by attorney general. The attorney general may bring an action to restrain a foreign limited partnership from transacting

business in this state in violation of ~~35-12-1301 through 35-12-1307~~ *this chapter*."

Section 77. Direct action by partner. (1) Subject to subsection (2), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(2) A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(3) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 78. Section 35-12-1401, MCA, is amended to read:

"35-12-1401. ~~Right of~~ *Derivative* action. A ~~limited~~ partner may ~~bring~~ *maintain* a derivative action ~~in the~~ *to enforce a* right of a limited partnership ~~to recover a judgment in its favor~~ if*:*

(1) the *partner first makes a demand on the* general partners ~~having authority to do so have refused~~ *requesting that they cause the limited partnership* to bring ~~the~~ *an* action ~~or an effort to cause those general partners to bring the action is not likely to succeed~~ *to enforce the right and the general partners do not bring the action within a reasonable time; or*

(2) a demand would be futile."

Section 79. Section 35-12-1402, MCA, is amended to read:

"35-12-1402. Proper plaintiff. ~~In a~~ *A* derivative action~~, the plaintiff must be~~ *may be maintained only by a person that is* a partner at the time ~~of bringing~~ the action *is commenced* and*:*

(1) ~~must have been~~ *that was* a partner ~~at the time of the transaction of which the plaintiff complains~~ *when the conduct giving rise to the action occurred;* or

(2) ~~the plaintiff's~~ *whose* status as a partner ~~must have~~ devolved by operation of law or pursuant to the terms of the partnership agreement from a person ~~who~~ *that* was a partner at the time of the ~~transaction~~ *conduct*."

Section 80. Section 35-12-1403, MCA, is amended to read:

"35-12-1403. Pleading. In ~~any~~ *a* derivative action, the complaint ~~shall set forth~~ *must state* with particularity*:*

(1) the ~~effort of the plaintiff to secure initiation of the action by a general partner having authority to do so~~ *date and content of the plaintiff's demand and the general partners' response to the demand;* or

(2) ~~the reasons for not making the effort~~ *why the demand should be excused as futile*."

Section 81. Section 35-12-1404, MCA, is amended to read:

"35-12-1404. ~~Expenses~~ *Proceeds and expenses.* *(1)* ~~If~~ *Except as provided in subsection (2):*

(a) any proceeds or other benefits of a derivative action*,* ~~is successful, in whole or in part, or anything is received by the plaintiff as a result of a~~ *whether by* judgment, compromise, or settlement*,* ~~of an action or claim,~~ *belong to the limited partnership and not to the derivative plaintiff;*

(b) if the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, ~~and shall direct the plaintiff to account to~~ *from the recovery of* the limited partnership ~~for the remainder of the proceeds received by the plaintiff~~."

Section 82. Definitions. As used in [sections 82 through 94], the following definitions apply:

(1) "Constituent limited partnership" means a constituent organization that is a limited partnership.

(2) "Constituent organization" means an organization that is party to a merger.

(3) "Converted organization" means the organization into which a converting organization converts pursuant to [sections 83 through 86].

(4) "Converting limited partnership" means a converting organization that is a limited partnership.

(5) "Converting organization" means an organization that converts into another organization pursuant to [section 83].

(6) "General partner" means a general partner of a limited partnership.

(7) "Governing statute" of an organization means the statute that governs the organization's internal affairs.

(8) "Organization" means a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; a limited liability company; a business trust; a corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(9) "Organizational document" means:

(a) for a domestic or foreign general partnership, its partnership agreement;

(b) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(c) for a domestic or foreign limited liability company, its articles of organization and operating agreement or comparable records as provided in its governing statute;

(d) for a business trust, its agreement of trust and declaration of trust;

(e) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders that are authorized by its governing statute or comparable records as provided in its governing statute; and

(f) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(10) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization that is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) by the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(b) by the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other

obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(11) "Surviving organization" means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

Section 83. Conversion. (1) An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization pursuant to [sections 82 through 86] and this section and a plan of conversion if:

(a) the other organization's governing statute authorizes the conversion;

(b) the conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) the other organization complies with its governing statute in effecting the conversion.

(2) A plan of conversion must be in a record and must include:

(a) the name and form of the organization before conversion;

(b) the name and form of the organization after conversion;

(c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(d) the organizational documents of the converted organization.

Section 84. Action on plan of conversion by converting limited partnership. (1) Subject to [section 91], a plan of conversion must be consented to by all the partners of a converting limited partnership.

(2) Subject to [section 91] and any contractual rights, after a conversion is approved, and at any time before a filing is made under [section 85], a converting limited partnership may amend the plan or abandon the planned conversion:

(a) as provided in the plan; and

(b) except as prohibited by the plan, by the same consent as was required to approve the plan.

Section 85. Filings required for conversion — effective date. (1) After a plan of conversion is approved:

(a) a converting limited partnership shall deliver to the secretary of state for filing articles of conversion, which must include:

(i) a statement that the limited partnership has been converted into another organization;

(ii) the name and form of the organization and the jurisdiction of its governing statute;

(iii) the date the conversion is effective under the governing statute of the converted organization;

(iv) a statement that the conversion was approved as required by this chapter;

(v) a statement that the conversion was approved as required by the governing statute of the converted organization;

(vi) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of [section 86(3)]; and

(vii) a statement that the certificate of limited partnership is to be canceled as of the date on which the conversion took effect; and

(b) if the converting organization is not a converting limited partnership, the converting organization shall deliver to the secretary of state for filing a certificate of limited partnership, which must include, in addition to the information required by 35-12-601:

(i) a statement that the limited partnership was converted from another organization;

(ii) the name and form of the organization and the jurisdiction of its governing statute; and

(iii) a statement that the conversion was approved in a manner that complied with the organization's governing statute.

(2) In the case of a limited partnership, the filing of articles of organization under subsection (1)(a) cancels its certificate of limited partnership as of the date on which the conversion took effect.

(3) A conversion becomes effective:

(a) if the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

(b) if the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

Section 86. Effect of conversion. (1) An organization that has been converted pursuant to [sections 82 through 94] is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting organization remains vested in the converted organization;

(b) all debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization; and

(e) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in 35-7-113.

Section 87. Merger. (1) A limited partnership may merge with one or more other constituent organizations pursuant to [sections 88 through 90], this section, and a plan of merger if:

(a) the governing statute of each of the other organizations authorizes the merger;

(b) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(c) each of the other organizations complies with its governing statute in effecting the merger.

(2) A plan of merger must be in a record and must include:

(a) the name and form of each constituent organization;

(b) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) if the surviving organization is to be created by the merger, the surviving organization's organizational documents; and

(e) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

Section 88. Action on plan of merger by constituent limited partners. (1) Subject to [section 91], a plan of merger must be consented to by all the partners of a constituent limited partnership.

(2) Subject to [section 91] and any contractual rights, after a merger is approved and at any time before a filing is made under [section 89], a constituent limited partnership may amend the plan or abandon the planned merger:

(a) as provided in the plan; and

(b) except as prohibited by the plan, with the same consent as was required to approve the plan.

Section 89. Filings required for merger — effective date. (1) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(a) each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(b) each other preexisting constituent organization, by an authorized representative.

(2) The articles of merger must include:

(a) the name and form of each constituent organization and the jurisdiction of its governing statute;

(b) the name and form of the surviving organization, the jurisdiction of its governing statute, and if the surviving organization is created by the merger, a statement to that effect;

(c) the date the merger is effective under the governing statute of the surviving organization;

(d) if the surviving organization is to be created by the merger:

(i) if it will be a limited partnership, the limited partnership's certificate of limited partnership; or

(ii) if it will be an organization other than a limited partnership, the organizational document that creates the organization;

(e) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;

(f) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(g) if the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of [section 90(2)]; and

(h) any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited partnership shall deliver the articles of merger for filing in the office of the secretary of state.

(4) A merger becomes effective under [sections 82 through 94]:

(a) if the surviving organization is a limited partnership, upon the later of:

(i) compliance with subsection (3); or

(ii) subject to [section 20(3)], as specified in the articles of merger; or

(b) if the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

Section 90. Effect of merger. (1) When a merger becomes effective:

(a) the surviving organization continues or comes into existence;

(b) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(c) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(d) all debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(e) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(f) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(g) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(h) except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of chapter 12;

(i) if the surviving organization is created by the merger:

(i) if it is a limited partnership, the certificate of limited partnership becomes effective; or

(ii) if it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(j) if the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes

of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in 35-7-113.

Section 91. Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status. (1) If a partner of a converting limited partnership or constituent limited partnership will have personal liability with respect to a converted organization or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner unless:

(a) the limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

(b) the partner has consented to the provision of the partnership agreement.

(2) An amendment to a certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

(a) the limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(b) each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(3) A partner does not give the consent required by subsection (1) or (2) merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

Section 92. Liability of general partner after conversion or merger. (1) A conversion or merger under [sections 82 through 94] does not discharge any liability under 35-12-803 and [section 55] of a person that was a general partner in or dissociated as a general partner from a converting limited partnership or constituent limited partnership, but:

(a) the provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

(b) for the purposes of applying those provisions, the converted organization or surviving organization is considered to be the converting limited partnership or constituent limited partnership; and

(c) if a person is required to pay any amount under this subsection (1):

(i) the person has a right of contribution from each other person that was liable as a general partner under 35-12-803 when the obligation was incurred and has not been released from the obligation under [section 55]; and

(ii) the contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) In addition to any other liability provided by law:

(a) a person that immediately before a conversion or merger became effective was a general partner in a converting limited partnership or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted organization or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective if, at the time the third party enters into the transaction, the third party:

(i) does not have notice of the conversion or merger; and

(ii) reasonably believes that:

(A) the converted organization or surviving organization is the converting limited partnership or constituent limited partnership;

(B) the converting limited partnership or constituent limited partnership is not a limited liability limited partnership; and

(C) the person is a general partner in the converting limited partnership or constituent limited partnership; and

(b) a person that was dissociated as a general partner from a converting limited partnership or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted organization or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective if:

(i) immediately before the conversion or merger became effective the converting limited partnership or surviving limited partnership was a not a limited liability limited partnership; and

(ii) at the time the third party enters into the transaction, less than 2 years have passed since the person dissociated as a general partner and the third party:

(A) does not have notice of the dissociation;

(B) does not have notice of the conversion or merger; and

(C) reasonably believes that the converted organization or surviving organization is the converting limited partnership or constituent limited partnership, the converting limited partnership or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting limited partnership or constituent limited partnership.

Section 93. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger. (1) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting limited partnership or constituent limited partnership binds the converted organization or surviving organization after the conversion or merger becomes effective if:

(a) before the conversion or merger became effective, the act would have bound the converting limited partnership or constituent limited partnership under [section 33]; and

(b) at the time the third party enters into the transaction, the third party:

(i) does not have notice of the conversion or merger; and

(ii) reasonably believes that the converted or surviving business is the converting limited partnership or constituent limited partnership and that the person is a general partner in the converting limited partnership or constituent limited partnership.

(2) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting limited partnership or constituent limited partnership binds the converted organization or surviving organization after the conversion or merger becomes effective if:

(a) before the conversion or merger became effective, the act would have bound the converting limited partnership or constituent limited partnership under [section 33] if the person had been a general partner; and

(b) at the time the third party enters into the transaction, less than 2 years have passed since the person dissociated as a general partner and the third party:

(i) does not have notice of the dissociation;

(ii) does not have notice of the conversion or merger; and

(iii) reasonably believes that the converted organization or surviving organization is the converting limited partnership or constituent limited partnership and that the person is a general partner in the converting limited partnership or constituent limited partnership.

(3) If a person having knowledge of the conversion or merger causes a converted organization or surviving organization to incur an obligation under subsection (1) or (2), the person is liable:

(a) to the converted organization or surviving organization for any damage caused to the organization arising from the obligation; and

(b) if another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

Section 94. Part not exclusive. [Sections 82 through 94] do not preclude an entity from being converted or merged under other law.

Section 95. Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

Section 96. Application to existing relationships. (1) Before [the effective date of this act], [this act] governs only:

(a) a limited partnership formed on or after [the effective date of this act]; and

(b) except as otherwise provided in subsections (3) and (4), a limited partnership formed before [the effective date of this act] that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to [this act].

(2) Except as otherwise provided in subsection (3), on and after [the effective date of this act], [this act] governs all limited partnerships.

(3) With respect to a limited partnership formed before [the effective date of this act], the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(a) Section 35-12-509(3) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before [the effective date of this act].

(b) The limited partnership is not required to amend its certificate of limited partnership to comply with 35-12-601(1)(d).

(c) [Sections 49 and 50] do not apply, and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before [the effective date of this act].

(d) [Section 51(4)] does not apply.

(e) [Section 51(5)] does not apply, and a court has the same power to expel a general partner as the court had immediately before [the effective date of this act].

(f) Section 35-12-1201(3) does not apply, and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before [the effective date of this act].

(4) With respect to a limited partnership that elects pursuant to subsection (1)(b) to be subject to [this act], after the election takes effect, the provisions of [this act] relating to the liability of the limited partnership's general partners to third parties apply:

(a) before [the effective date of this act], to:

(i) a third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(b) on and after [the effective date of this act], to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under subsection (4)(a)(ii).

Section 97. Repealer. The following sections of the Montana Code Annotated are repealed:

35-12-503. Rules for cases not provided for in this chapter.
35-12-606. Filing in the office of the secretary of state.
35-12-608. Constructive notice.
35-12-609. Delivery of certificates to limited partners.
35-12-702. Voting.
35-12-802. When person ceases to be general partner of limited partnership.
35-12-804. Contributions by general partner.
35-12-805. Voting.
35-12-903. Allocation of profits and losses.
35-12-904. Allocation of distributions.
35-12-1002. Withdrawal of general partner.
35-12-1003. Withdrawal of limited partner.
35-12-1004. Distributions upon withdrawal.
35-12-1007. Limitations on distributions.
35-12-1008. Liability upon return of contributions.
35-12-1101. Nature of partnership interest.
35-12-1102. Assignment of partnership interest.
35-12-1104. Right of assignee to become limited partner.
35-12-1203. Winding up.
35-12-1204. Distribution of assets.
35-12-1303. Issuance of registration.
35-12-1304. Name.
35-12-1305. Changes and amendments.
35-12-1306. Cancellation of registration.

Section 98. Codification instruction. [Sections 3, 8 through 11, 13, 14, 20, 21, 23, 25, 27, 31, 33, 34, 36 through 39, 42, 44, 47 through 57, 62 through 68, 71 through 74, 77, and 82 through 94] are intended to be codified as an integral part of Title 35, chapter 12, and the provisions of Title 35, chapter 12, apply to [sections 3, 8 through 11, 13, 14, 20, 21, 23, 25, 27, 31, 33, 34, 36 through 39, 42, 44, 47 through 57, 62 through 68, 71 through 74, 77, and 82 through 94].

Section 99. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 100. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 18, 2011

CHAPTER NO. 217

[SB 89]

AN ACT REDUCING THE TIME FOR REVIEW OF SUBDIVISION APPLICATIONS FOR PUBLIC AND PRIVATE WATER SUPPLIES, SEWAGE DISPOSAL FACILITIES, STORM WATER DRAINAGE WAYS, AND SOLID WASTE DISPOSAL BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND LOCAL DEPARTMENTS OR BOARDS OF HEALTH; CLARIFYING PROCEDURES FOR PROVIDING EVIDENCE OF SYSTEMS COMPLIANCE; REQUIRING THE DEPARTMENT TO NOTIFY APPLICANTS UNDER CERTAIN CIRCUMSTANCES IF AN APPLICATION DOES NOT INCLUDE EVIDENCE OF CERTIFICATION FROM THE LOCAL HEALTH DEPARTMENT OR APPROVAL FROM THE LOCAL GOVERNING BODY; REVISING PROCEDURES FOR DEPARTMENT REVIEW OF SUBDIVISION APPLICATIONS; AMENDING SECTIONS 76-4-104 AND 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

(a) size of lots;

(b) contour of land;

(c) porosity of soil;

(d) ground water level;

(e) distance from lakes, streams, and wells;

(f) type and construction of private water and sewage facilities; and

(g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(h);

(j) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other

methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat~~; and~~. *Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.*

(k) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than ~~50~~ *45* days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than ~~60~~ *55* days after the submission of a complete application, as provided in 76-4-125.

(8) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622."

Section 2. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application — land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer

shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under 76-4-104, the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by 76-4-104(6)(j) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in 76-3-604(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under 76-4-104, the department shall make a final decision on the application within 10 days after the local reviewing authority completes its review.

~~(b)~~*(d)* Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within ~~60~~ *55* days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2011

CHAPTER NO. 218

[SB 140]

AN ACT EXEMPTING CERTAIN MOTOR CARRIERS FROM REGULATION BY THE PUBLIC SERVICE COMMISSION; DEFINING "CHARTER SERVICE"; AMENDING SECTIONS 69-12-101 AND 69-12-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-101, MCA, is amended to read:

"69-12-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means the certificate of public convenience and necessity issued under this chapter.

(3) "Charter service" means a service used for the transportation of passengers by a motor carrier with rates not subject to approval by the commission if:

(a) the transportation of passengers is based on a single contract;

(b) the contract is entered into in advance of the transportation and does not result from a spontaneous, curbside agreement;

(c) the contract includes a single fixed charge and fares are not assessed per passenger;

(d) the passenger or group of passengers acquires exclusive use of the motor vehicle through the contract; and

(e) when applied to a group of passengers being transported, the group of passengers travels together to a specified destination.

~~(3)~~*(4)* "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

~~(4)~~*(5)* "Corporation" means a corporation, company, association, or joint-stock association.

~~(5)~~*(6)* "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

~~(6)~~*(7)* "Garbage" means ashes, trash, waste, refuse, rubbish, organic or inorganic matter that is transported to a licensed transfer station, licensed landfill, licensed municipal solid waste incinerator, or licensed disposal well. The term does not include wastewater and waste tires.

~~(7)~~*(8)* "Household goods" means any of the following:

(a) personal effects and property used or to be used in a dwelling when they are a part of the equipment or supply of the dwelling. The term does not include property moving from a factory or store unless the property is purchased by a householder for use in a dwelling and is transported at the request of the householder.

(b) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when those items are a part of the stock, equipment, or supply of the stores, offices, museums, institutions, hospitals, or other establishments. The term does not include the stock-in-trade of an establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment or a portion of the establishment from one location to another.

(c) articles, including objects of art, displays, and exhibitions that because of their unusual nature or value, require the specialized handling and equipment usually employed in moving household goods and other similar articles.

~~(8)~~*(9)* "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of passengers, household goods, or garbage for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking.

~~(9)~~*(10)* "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

~~(10)~~*(11)* "Person" means an individual, firm, or partnership.

~~(11)~~*(12)* "Public highway" means a public street, road, highway, or way in this state.

~~(12)~~*(13)* "Railroad" means the movement of cars on rails, regardless of the motive power used.

~~(13)~~*(14)* "Recyclable" means any material diverted from the solid waste stream that can be reused in the production of heat or energy or as raw material for new products and for which markets exist."

Section 2. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village with a population of less than 500 persons, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2;

(ii) a municipal bus service pursuant to Title 7, chapter 14, part 44; or

(iii) any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; ~~or~~

(k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection *(1)(k)*, "private, nonprofit ~~organization"~~ *organizations"* means ~~an organization~~ *organizations* recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(l) the transportation of a group of passengers by charter service if:

(i) the motor vehicle used for the transportation of the passengers is designed to carry more than 26 passengers; and

(ii) the motor carrier has obtained a USDOT number from the U.S. department of transportation as provided in 49 CFR 390.19; or

(m) the transportation of a group of employees to or from a worksite by a motor carrier under contract with the employer for a period of time of at least 1 year.

(2) Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 3. Implementation. (1) The commission shall issue a certificate of public convenience and necessity that authorizes a motor carrier to provide charter service if the motor carrier provides written documentation or business

records to the commission that demonstrate during the 1-year period prior to January 1, 2011, the motor carrier:

(a) provided charter service;

(b) transported passengers with a motor vehicle designed to carry more than 10 passengers; and

(c) obtained a USDOT number from the U.S. department of transportation as provided in 49 CFR 390.19.

(2) The written documentation or business records must be submitted to the commission within 6 months following [the effective date of this act].

(3) The commission shall issue all certificates of public convenience and necessity under subsection (1) by July 1, 2012.

(4) After July 1, 2012, a motor carrier subject to regulation by the commission may not transport passengers in charter service without a certificate of public convenience and necessity.

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2011

CHAPTER NO. 219

[SB 179]

AN ACT ESTABLISHING THE HIGHWAY PATROL OFFICER DAVID DELAITTRE MEMORIAL HIGHWAY; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING NEW ROADWAY MAPS TO INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, David DeLaittre proudly, honorably, and courageously served the citizens of Montana as an exemplary highway patrol trooper; and

WHEREAS, David dedicated his life to public safety as he served the people of Montana; and

WHEREAS, David fought courageously as his final service to keep all of us safe upon the highways of this great state; and

WHEREAS, we honor David as he made the ultimate sacrifice as his final duty to the citizens of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Highway patrol officer David DeLaittre memorial highway. (1) There is established the highway patrol officer David DeLaittre memorial highway on existing U.S. highway 287 and Montana highway 2 between mile 93.3 and mile 97.3.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2011

CHAPTER NO. 220

[SB 180]

AN ACT SUBSTITUTING THE TERM "CRIMINAL MISCHIEF DAMAGE TO RENTAL PROPERTY" FOR "DAMAGE TO RENTAL PROPERTY" AS AN OFFENSE; AMENDING SECTION 45-6-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-106, MCA, is amended to read:

"45-6-106. ~~Damage~~ *Criminal mischief damage* to rental property. (1) A tenant commits the offense of *criminal mischief* damage to rental property if the tenant purposely or knowingly destroys, defaces, damages, impairs, or removes any part of the premises with a value of at least $1,000 ~~over the amount of any damage deposit or, if no damage deposit was paid, a value of at least $1,000~~ *or permits any person to do so* in violation of 70-24-321(2) or 70-33-321(3).

(2) A person convicted of the offense of *criminal mischief* damage to rental property shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person convicted of *criminal mischief* damage to rental property must be ordered to make restitution in an amount and manner to be set by the court pursuant to 46-18-201(5) and 46-18-241 through 46-18-249.

(4) A prosecution under this section is independent of and does not constitute a waiver of any of the rights, duties, obligations, and remedies otherwise provided for under Title 70, chapter 24 or 33.

(5) A person convicted of criminal mischief damage to rental property under this section is not subject to the provisions of 45-6-101."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2011

CHAPTER NO. 221

[SB 184]

AN ACT ALLOWING THE USE OF BOWS AND ARROWS TO HUNT WILD BUFFALO; CLARIFYING THAT WILD BUFFALO MAY BE HUNTED WITH HUNTING ARMS OTHER THAN BOWS AND ARROWS; AND AMENDING SECTIONS 87-1-304, 87-2-730, AND 87-2-731, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-304, MCA, is amended to read:

"87-1-304. Fixing of seasons and bag and possession limits. (1) (a) The commission may:

(i) fix seasons, bag limits, possession limits, and season limits;

(ii) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and

(iii) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, *wild buffalo or bison,* and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, *wild buffalo or bison,* and wolf in those areas.

(b) The commission may restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences.

(c) The commission may declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) The commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. Section 87-2-730, MCA, is amended to read:

"87-2-730. Special wild buffalo license — regulation. (1) The public hunting of wild buffalo or bison that have been designated as a species in need of disease control under 81-2-120 is permitted only when authorized by the department of livestock under the provisions set forth in 81-2-120.

(2) The department may issue special licenses to hunt wild buffalo or bison designated as a species in need of disease control when authorized by the department of livestock.

(3) The department shall adopt rules in cooperation with the department of livestock. The rules must provide for:

(a) license drawing procedures;

(b) drawing and application fees consistent with 87-2-113;

(c) notification of license recipients as to when and where they may hunt, but notification may not include information regarding the actual physical location of a wild buffalo or bison other than the prescribed hunting district where the animal may be taken;

(d) fair chase hunting of wild buffalo or bison, including requirements that hunting be conducted on foot and away from public roads and that there be no designation of specific wild buffalo or bison to be hunted;

(e) means of taking and handling of carcasses in the field, which must include provisions for public safety because of the potential for the spread of infectious disease;

(f) the use of bows and arrows and other hunting arms;

~~(f)~~*(g)* tagging requirements for carcasses, skulls, and hides;

~~(g)~~*(h)* possession limits;

~~(h)~~*(i)* requirements for transportation and exportation; and

~~(i)~~*(j)* requirements and criteria for authorization by the state veterinarian and the department of livestock of any public hunting."

Section 3. Section 87-2-731, MCA, is amended to read:

"87-2-731. (Temporary) Allocation of wild buffalo licenses to tribes for traditional purposes. (1) If the commission authorizes the issuance of 40 or more special wild buffalo licenses in any license year, the department shall issue special licenses to individuals of each tribe designated in subsection (4) to hunt wild buffalo during the regular season for wild buffalo and as prescribed in department rules and regulations. The department shall issue two special wild buffalo licenses to individuals designated by the respective tribal diabetic programs of each of the Montana tribes designated in subsection (4), coincident with the sale of any special wild buffalo licenses for public hunting pursuant to 87-2-730 and in accordance with the terms and conditions of this section.

(2) Wild buffalo taken pursuant to the special licenses issued under subsection (1) must be harvested by tribal members in accordance with the traditional ceremonies of each tribe. All parts of wild buffalo taken pursuant to this section may be possessed and used by each designated tribe in the manner that the tribe sees fit.

(3) Special wild buffalo licenses granted for tribal use pursuant to this section must be issued free of charge. The tribes must be informed of and abide by any rules adopted pursuant to 87-2-730(3)(c) through ~~(3)(h)~~ *(3)(i)*, except that fair chase hunting by tribal members may include hunting conducted on horseback.

(4) The following Montana tribes may designate individuals from their tribal diabetic programs to receive department-issued special licenses, and the individuals are entitled to hunt during the season set aside by the commission for hunting wild buffalo:

(a) Assiniboine and Sioux tribes;

(b) Blackfeet tribe;

(c) Chippewa Cree tribe;

(d) Confederated Salish and Kootenai tribes;

(e) Crow tribe;

(f) Gros Ventre and Assiniboine tribes;

(g) Northern Cheyenne tribe; and

(h) Little Shell band of Chippewa.

(5) Special wild buffalo licenses granted under this section must be offered to the designated tribes as the first wild buffalo licenses available for hunting each year and may be granted to tribal designees in any order. When each of the two individuals designated by each tribe has been offered a license in any license year, any additional available licenses may be issued in the manner provided by the rules adopted by the commission pursuant to 87-2-730.

(6) Use of the special wild buffalo licenses granted under this section to individuals designated by the Montana tribes must coincide with the use of any other special wild buffalo license purchased for public hunting pursuant to 87-2-730. (Terminates July 1, 2015—sec. 5, Ch. 378, L. 2005.)"

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Approved April 18, 2011

CHAPTER NO. 222

[SB 213]

AN ACT ESTABLISHING A PINTLER VETERANS' MEMORIAL SCENIC HIGHWAY; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE MARKERS TO RECOGNIZE THE DESIGNATION WHEN EXISTING SIGNS NEED REPLACING; REQUIRING THAT NEW ROADWAY MAPS INCLUDE THE DESIGNATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Pintler veterans' memorial scenic highway. (1) There is established the Pintler veterans' memorial scenic highway on the existing Montana highway 1.

(2) When existing road signs on the designated highway need replacement, the department shall provide appropriate markers to recognize the memorial designation of the highway.

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are regularly updated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 18, 2011

CHAPTER NO. 223

[SB 304]

AN ACT GENERALLY REVISING DEPENDENCY AND NEGLECT LAWS; CLARIFYING VENUE AND CREATING LONG-ARM JURISDICTION OVER CHILDREN WHO HAVE BEEN REMOVED FROM THE STATE; CLARIFYING THAT MANDATORY REPORTERS OF SUSPECTED CHILD ABUSE MUST REPORT ABUSE REGARDLESS OF THE IDENTITY OF THE ABUSER; REMOVING DUPLICATION IN THE SHOW CAUSE HEARING PROCESS AND THE ADJUDICATION HEARING PROCESS; MODIFYING THE PROCEDURE FOR OBTAINING EMERGENCY PROTECTIVE SERVICES; AND AMENDING SECTIONS 41-3-103, 41-3-201, 41-3-301, 41-3-427, AND 41-3-432, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-103, MCA, is amended to read:

"41-3-103. Jurisdiction *and venue*. (1) ~~In~~ *Except as provided in the federal Indian Child Welfare Act, in* all matters arising under this chapter, *a person is subject to a proceeding under this chapter and* the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; ~~or~~

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose~~.~~*;*

(d) a youth or youth's parent or guardian who resides in Montana;

(e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) ~~Either~~ *Venue is proper in* the county where a youth is located *or has resided within 180 days before the filing of a petition under this part* or a county where the youth's parent or guardian resides ~~has initial jurisdiction over a youth alleged to be a youth in need of care~~ *or has resided within 180 days before the filing of a petition under this part*."

Section 2. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected *by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child's welfare*, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy, as defined in 15-6-201(2)(a);

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

(4) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(5) (a) Except as provided in subsection (5)(b) or (5)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(6) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 3. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any ~~youth~~ *child* is in immediate or apparent danger of harm may immediately remove the ~~youth~~ *child* and place the ~~youth~~ *child* in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take

appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical *or legal* custody of the ~~youth~~ *child* of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical *or legal* custody of the ~~youth~~ *child* that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) If a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

~~(6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.~~

(6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

~~(7)~~*(7)* If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child,

the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. ~~The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.~~

~~(8)~~*(8)* The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing."

Section 4. Section 41-3-427, MCA, is amended to read:

"41-3-427. Petition for immediate protection and emergency protective services — order — service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and *must be supported by an affidavit signed by a representative of the department stating in detail the alleged facts upon which the request is based and* the facts establishing probable cause *or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence* that a child is abused or neglected or is in danger of being abused or neglected. *The affidavit of the department representative must contain information, if any, regarding statements made by the parents about the facts of the case.*

(c) ~~The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.~~ *If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.*

(d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of the petition and affidavit.

~~(d)~~*(e)* The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical *or legal* custody of the ~~youth~~ *child* that the parents,

parent, guardian, or other person *having physical or legal custody of the child* may have a support person present during any in-person meeting with a social worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

(2) ~~The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable.~~ *Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue an order for immediate protection of the child.* The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause *or*, if the case is subject to the federal Indian Child Welfare Act*, clear and convincing evidence,* the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422."

Section 5. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing — order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) ~~At the show cause hearing~~ *If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department*, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony *regarding the disputed issues*. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) ~~The~~ *Except as provided in the federal Indian Child Welfare Act, if applicable, the* court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Approved April 18, 2011

CHAPTER NO. 224

[SB 320]

AN ACT ENCOURAGING THE UPGRADING OF TRANSMISSION LINES WITHIN EXISTING RIGHTS-OF-WAY TO AVOID THE PROLIFERATION OF NEW TRANSMISSION CORRIDORS; CLARIFYING LEGISLATIVE FINDINGS AND CERTAIN DEFINITIONS UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-102 AND 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-102, MCA, is amended to read:

"75-20-102. Policy and legislative findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Major Facility Siting Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(3) It is also constitutionally declared in the state of Montana that the inalienable rights of the citizens of this state include the right to pursue life's basic necessities, to enjoy and defend life and liberty, to acquire, possess, and protect property, and to seek safety, health, and happiness in all lawful ways. The balancing of these constitutional rights is necessary in order to maintain a sustainable quality of life for all Montanans.

(4) The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities are in compliance with state law and that an electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of compliance acquired pursuant to this chapter.

(5) The legislature finds that increasing the capacity of existing transmission lines by replacing less efficient aging low-voltage transmission lines with higher-voltage lines, installing new conductors to lower impedance, and adding circuits to existing transmission lines within existing linear corridors reduces energy loss, conserves energy, and prevents unreasonable depletion and degradation of natural resources. Therefore, transmission upgrades within existing corridors serve the public interest, convenience, and necessity and transmission providers are encouraged to construct those transmission upgrades.

~~(5)~~*(6)* The legislature also finds that it is the purpose of this chapter to:

(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;

(b) ensure consideration of socioeconomic impacts;

(c) provide citizens with the opportunity to participate in facility siting decisions; and

(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."

Section 2. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts ~~but less than 230 kilovolts~~ for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include ~~an~~ electric transmission ~~line~~ *lines* that ~~is~~ *are collectively* less than 150 miles in length ~~and extends from~~ *and are required under state or federal regulations and laws, with respect to reliability of service, for* an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation facility, as defined in 15-6-157, ~~to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility~~ *to interconnect to a regional transmission grid or secure firm transmission service to use the grid* for which the person planning to construct the line *or lines* has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline *or centerlines*;

(iv) does not include an upgrade to an existing transmission line *of a design capacity of 50 kilovolts or more* to increase that line's capacity ~~to less than or equal to 230 kilovolts~~, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this

subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas *or conform to state or federal safety, reliability, and operational standards designed to safeguard the transmission network and protect electrical workers and the public*.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(12) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; ~~or~~

(d) changing structure spacing, design, or guying*; or*

(e) installing additional circuits.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to applications for certificates filed after [the effective date of this act].

Approved April 18, 2011

CHAPTER NO. 225

[HB 12]

AN ACT REVISING PENALTIES FOR ALCOHOL-RELATED DRIVING OFFENSES BY EXTENDING THE POSSIBLE JAIL TIME FOR CERTAIN MISDEMEANOR OFFENSES; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) Except as provided in subsection (4), a person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than ~~6 months~~ *6 months* and by a fine of not less than $300 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than ~~12 months~~ *1 year* and by a fine of not less than $600 or more than $2,000. The initial 24 hours of the imprisonment term must be served and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) Except as provided in subsection (4), on a second conviction, the person shall be punished by a fine of not less than $600 or more than $1,000 and by imprisonment for not less than 7 days or more than ~~6 months~~ *1 year*, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine of not less than $1,200 or more than $2,000 and by imprisonment for not less than 14 days or more than ~~12 months~~ *1 year*. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(3) Except as provided in subsection (4), on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than $1,000 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of

the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than ~~12 months~~ *1 year* and by a fine of not less than $2,000 or more than $10,000. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration."

Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) Except as provided in subsection (4), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than ~~10 days~~ *6 months* and by a fine of not less than $300 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than ~~20 days~~ *6 months* and by a fine of not less than $600 or more than $2,000.

(2) Except as provided in subsection (4), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on home arrest, or more than ~~30 days~~ *1 year* and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days, which may not be served on home arrest, or more than ~~60 days~~ *1 year* and by a fine of not less than $1,200 or more than $2,000. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.

(3) Except as provided in subsection (4), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than ~~10~~ *30* days, to be served in the county jail and not on home arrest, or more than ~~6 months~~ *1 year* and by a fine of not less than $1,000 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than ~~20~~ *60* days, which may not be served on home arrest, or more than ~~12 months~~ *1 year* and by a fine of not less than $2,000 or more than $10,000. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 20, 2011

CHAPTER NO. 226

[HB 69]

AN ACT ENCOURAGING DUI COURT PARTICIPATION; REVISING PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; ALLOWING DUI COURTS TO SUSPEND ALL OR A PORTION OF IMPRISONMENT SENTENCES; DEFINING A DUI COURT; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Suspension of imprisonment sentence for DUI court participation — DUI court defined. (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under 61-8-714 or 61-8-722, except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons convicted under 61-8-401 or 61-8-406 and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to 61-8-732 and to end the participant's criminal behavior associated with driving under the influence of drugs or alcohol or with excessive blood alcohol concentration.

Section 2. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) *(a)* Except as provided in subsection (4), a person convicted of a *first* violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than ~~6 months~~ *6 months* and by a fine of not less than $300 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than ~~12 months~~ *1 year* and by a fine of not less than $600 or more than $2,000.

(b) The ~~initial 24 hours of the~~ *mandatory minimum* imprisonment term ~~must be served and~~ may not be served under home arrest~~. The mandatory imprisonment sentence~~ *and* may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(c) ~~Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the~~ *The remainder of the* imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) *(a)* Except as provided in subsection (4), ~~on a second conviction, the person~~ *a person convicted of a second violation of 61-8-401* shall be punished by a fine of not less than $600 or more than $1,000 and by imprisonment for not less than 7 days or more than ~~6 months~~ *1 year*, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person

shall be punished by a fine of not less than $1,200 or more than $2,000 and by imprisonment for not less than 14 days or more than ~~12 months~~ *1 year*.

(b) ~~At least 48 hours of the~~ *The mandatory minimum* imprisonment term ~~must be served and served consecutively and~~ may not be served under home arrest~~. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended~~ *and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being*.

(c) ~~Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the~~ *The remainder of the* imprisonment sentence may be suspended for a period of up to 1 year pending *the person's* successful completion of a chemical dependency treatment program ~~by the person~~ *pursuant to 61-8-732*.

(3) *(a)* Except as provided in subsection (4), ~~on the third conviction, the person~~ *a person convicted of a third violation of 61-8-401* shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than $1,000 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than ~~12 months~~ *1 year* and by a fine of not less than $2,000 or more than $10,000.

(b) ~~At least 48 hours of the~~ *The mandatory minimum* imprisonment term ~~must be served and served consecutively and~~ may not be served under home arrest *and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being*~~. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.~~

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending *the person's* successful completion of a chemical dependency treatment program ~~by the person~~ *pursuant to 61-8-732*.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration."

Section 3. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) Except as provided in subsection (4), a person convicted of a *first* violation of 61-8-406 shall be punished by imprisonment for not more than ~~10 days~~ *6 months* and by a fine of not less than $300 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than ~~20 days~~ *6 months* and by a fine of not less than $600 or more than $2,000.

(2) *(a)* Except as provided in subsection (4), ~~on a second conviction~~ *a person convicted* of a *second* violation of 61-8-406~~, the person~~ shall be punished by imprisonment for not less than 5 days~~, to be served in the county jail and not on home arrest,~~ or more than ~~30 days~~ *1 year* and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days~~, which may not be served on home~~

~~arrest,~~ or more than ~~60 days~~ *1 year* and by a fine of not less than $1,200 or more than $2,000.

(b) The ~~imposition or execution of the first 5 days of the~~ *mandatory minimum* imprisonment sentence may not be *served under home arrest and may not be* suspended *unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being*.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

(3) *(a)* Except as provided in subsection (4), ~~on a third conviction~~ *a person convicted* of a *third* violation of 61-8-406~~, the person~~ shall be punished by imprisonment for not less than ~~10~~ *30* days~~, to be served in the county jail and not on home arrest,~~ or more than ~~6 months~~ *1 year* and by a fine of not less than $1,000 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than ~~20~~ *60* days~~, which may not be served on home arrest,~~ or more than ~~12 months~~ *1 year* and by a fine of not less than $2,000 or more than $10,000.

(b) The ~~imposition or execution of the first 10 days of the imprisonment sentence~~ *mandatory minimum imprisonment sentence* may not be *served under home arrest and may not be* suspended *unless the judge finds that imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.*

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to 61-8-732.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [section 1].

Section 5. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 20, 2011

CHAPTER NO. 227

[HB 125]

AN ACT GENERALLY REVISING SECURITIES AND INSURANCE LAWS; PROVIDING CONSISTENCY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR JUDICIAL REVIEW OF A SECURITIES COMMISSIONER'S ORDER; INCLUDING CONFIDENTIAL DOCUMENTS RECEIVED FROM ANOTHER STATE AGENCY AS AMONG THOSE MAINTAINED AS CONFIDENTIAL BY THE INSURANCE COMMISSIONER; REMOVING REGULATION OF EXCESS DEPOSITS BY INSURERS; REVISING THE DEFINITION OF "INSURER" RELATING TO CAPTIVE RISK RETENTION GROUPS; APPLYING RISK-BASED CAPITAL REPORTING REQUIREMENTS TO CAPTIVE RISK RETENTION GROUPS; INCLUDING A TREND TEST FOR RISK-BASED CAPITAL REPORTING

FOR PROPERTY AND CASUALTY INSURERS; REVISING THE SMALL BUSINESS HEALTH INSURANCE PURCHASING POOL AND TAX CREDIT PROGRAM; REVISING LAWS RELATED TO CAPTIVE INSURANCE COMPANIES; ELIMINATING A PENALTY PROVISION; ELIMINATING CERTAIN REQUIREMENTS FOR BASIC AND STANDARD HEALTH BENEFIT PLANS; AMENDING SECTIONS 15-30-2368, 15-31-130, 30-10-115, 30-10-209, 30-10-308, 33-1-311, 33-2-601, 33-2-1501, 33-2-1903, 33-2-1904, 33-4-309, 33-18-605, 33-22-508, 33-22-1803, 33-22-1821, 33-22-2002, 33-22-2004, 33-22-2006, 33-22-2008, 33-28-102, 33-28-107, 33-28-108, AND 33-28-207, MCA; REPEALING SECTIONS 33-2-609, 33-22-103, 33-22-1827, AND 33-22-1828, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-2368, MCA, is amended to read:

"15-30-2368. Tax credit for health insurance premiums paid — eligible small employers — pass-through entities. (1) There is a tax credit, determined under Title 33, chapter 22, part 20, for eligible small employers who are individuals against the taxes imposed in 15-30-2103 for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees' spouses and dependents under a group health plan ~~as defined in 33-22-2002~~ *subject to Title 33, chapter 22, part 20*.

(2) If the employer is an S. corporation, the shareholders may claim a pro rata share of the tax credit. If the employer is a partnership, the credit may be claimed by the partners in the same proportion used to report the partnership's income or loss for Montana income tax purposes."

Section 2. Section 15-31-130, MCA, is amended to read:

"15-31-130. Tax credit for health insurance premiums paid — eligible small employers — corporations. There is a tax credit, as determined under Title 33, chapter 22, part 20, for eligible small employers against the taxes imposed in 15-31-101 and 15-31-502 for qualifying premiums paid by the eligible small employer for coverage of eligible employees and eligible employees' spouses and dependents under a group health plan ~~as defined in 33-22-2002~~ *subject to Title 33, chapter 22, part 20*."

Section 3. Section 30-10-115, MCA, is amended to read:

"30-10-115. Deposits to general fund — exception. (1) All fees and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter, except for ~~portfolio~~ notice filing fees described in 30-10-209(1)(d) and examination costs collected under 30-10-210, must be deposited in the general fund.

(2) All ~~portfolio~~ notice filing fees collected under 30-10-209(1)(d) and examination costs collected under 30-10-210 must be deposited in the state special revenue fund in an account to the credit of the state auditor's office. The funds allocated by this section to the state special revenue account may ~~only~~ be used *only* to defray the expenses of the state auditor's office in discharging its administrative and regulatory powers and duties in relation to ~~portfolio~~ notice filing *under 33-10-209(1)(d)* and examinations. Any excess fees must be deposited in the general fund."

Section 4. Section 30-10-209, MCA, is amended to read:

"30-10-209. Fees. The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification~~,~~ or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of $200 for the first $100,000 of initial issue or portion of the first $100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum fee of $1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than $200 or more than $1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state~~,~~ or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a ~~portfolio~~ notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The ~~portfolio~~ notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115. The issuer shall pay a fee of $50 for each filing made for the purpose of changing the name of a series, portfolio, or other subdivision of an investment company or similar issuer.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer. A salesperson who is registered as an investment adviser representative with a broker-dealer registered as an investment adviser is not required to pay the $50 fee to register as an investment adviser representative.

(c) For a federal covered adviser, the fee is $200 for the initial notice filing and $200 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) Except for ~~portfolio~~ notice filing fees established in ~~this section~~ *subsection (1)(d)* and examination costs collected under 30-10-210, all fees,

miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund."

Section 5. Section 30-10-308, MCA, is amended to read:

"30-10-308. Judicial review of orders. Any person aggrieved by a final order of the commissioner ~~may obtain a~~ *is entitled to judicial* review ~~of the order in any court of competent jurisdiction by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the commissioner's order~~ *as provided in Title 2, chapter 4, part 7*."

Section 6. Section 33-1-311, MCA, is amended to read:

"33-1-311. General powers and duties. (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) *another state agency,* an insurance department from another state, a federal agency, or a foreign government that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to *another state agency,* the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, a foreign government, or an insurance department in another state, if the recipient agrees to maintain the confidentiality of the information or documents.

(6) The department is a criminal justice agency as defined in 44-5-103."

Section 7. Section 33-2-601, MCA, is amended to read:

"33-2-601. Authorized deposits of insurers. The following deposits of insurers when made through the commissioner ~~shall~~ *must* be accepted and held and ~~shall be~~ *are* subject to the provisions of this part:

(1) deposits required under this code for authority to transact insurance in this state;

(2) deposits of domestic insurers when ~~made pursuant to~~ *required by* the laws of other states, provinces, and countries as ~~requirement~~ *a condition* for *the* authority to transact insurance ~~in such state, province, or country~~; *or*

(3) deposits of reserves made by domestic life insurers under 33-2-531~~;~~

~~(4) deposits in such additional amounts as are permitted to be made under 33-2-609~~."

Section 8. Section 33-2-1501, MCA, is amended to read:

"33-2-1501. Definitions. As used in parts 15 through 17 of this chapter, the following definitions apply:

(1) "Accredited state" means a state in which the department of insurance or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(2) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(3) "Captive insurer" means:

(a) an insurer that is owned by another entity and whose exclusive purpose is to insure risks of the parent entity and its affiliates; or

(b) in the case of a group or association, an insurer that is owned by the member insureds and whose exclusive purpose is to insure risks to member insureds and their affiliates.

(4) "Control" or "controlled" has the meaning defined in 33-2-1101.

(5) "Controlled insurer" means an authorized insurer that is controlled, directly or indirectly, by a producer.

(6) "Controlling person" means a person, firm, association, or corporation that has the power to direct or cause to be directed the management, control, or activities of a reinsurance intermediary.

(7) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(8) (a) "Insurer" means any person, firm, association, or corporation authorized, under Title 33, chapter 2, part 1, to transact insurance business in this state.

(b) ~~The~~ *With regard to part 15 only, the* following are not insurers:

(i) risk retention groups as defined in:

(A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

(B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or

(C) Title 33, chapter 11, part 1;

(ii) residual market pools and joint underwriting authorities or associations; or

(iii) captive insurers.

(c) With regard to parts 16 and 17, captive insurers are not insurers but captive risk retention groups are insurers.

(9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

(10) (a) "Managing general agent" means a person who:

(i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

(ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and

(iii) engages in one or more of the following activities on the business produced:

(A) adjustment or payment of claims in excess of an amount determined by the commissioner; or

(B) negotiation of reinsurance on behalf of the insurer.

(b) Notwithstanding the provisions of subsection (10)(a), the following persons are not considered managing general agents:

(i) an employee of the insurer;

(ii) a manager of the United States branch of an alien insurer;

(iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written; or

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney.

(11) "NAIC" means the national association of insurance commissioners.

(12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed pursuant to this title.

(13) (a) "Qualified United States financial institution" means a financial institution that:

(i) is organized or licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies and that either:

(A) is determined by the commissioner to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the commissioner; or

(B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary powers.

(b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition and standing that may be developed from time to time by the securities valuation office of the NAIC.

(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(16) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer."

Section 9. Section 33-2-1903, MCA, is amended to read:

"33-2-1903. RBC reports. (1) ~~Except as provided in 33-28-107(4)(b), each~~ *Each* domestic insurer shall, on or before each March 1 filing date, prepare and submit to the commissioner a report of its RBC levels as of the end of the previous calendar year in a form and containing information as required by the RBC instructions. In addition, each domestic insurer shall file its RBC report:

(a) with the NAIC in accordance with the RBC instructions; and

(b) with the insurance commissioner in any state in which the insurer is authorized to do business if that insurance commissioner has notified the insurer of the request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) 15 days from the receipt of notice to file its RBC report with that state; or

(ii) the March 1 filing date.

(2) A life and disability insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take into account and may adjust for the covariance between:

(a) the risk with respect to the insurer's assets;

(b) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) the interest rate risk with respect to the insurer's business; and

(d) all other business risks and other relevant risks as are set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula ~~shall~~ *must* take into account and may ~~adjust~~ *be adjusted* for the covariance between:

(a) asset risk;

(b) credit risk;

(c) underwriting risk; and

(d) all other business risks and other relevant risks ~~that are~~ set forth in the RBC instructions and determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the risk-based capital requirements contained in this part and the formulas, schedules, and instructions referenced in 33-2-1906 through 33-2-1913 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this part. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this part.

(5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. An RBC report ~~so~~ adjusted *as provided in this subsection* is referred to as an adjusted RBC report."

Section 10. Section 33-2-1904, MCA, is amended to read:

"33-2-1904. Company action level event. (1) "Company action level event" means any of the following events:

(a) the filing of an RBC report by an insurer ~~which indicates~~ *indicating* that:

(i) the insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; ~~or~~

(ii) for a life or disability insurer, the insurer has total adjusted capital that*:*

(A) is greater than or equal to its company action level RBC but less than ~~the product of~~ its authorized control level RBC ~~and~~ *multiplied by* 2.5*;* and ~~that~~

(B) has a negative trend; *or*

(iii) for a property and casualty insurer, the insurer has total adjusted capital that:

(A) is greater than or equal to its company action level RBC but less than its authorized control level RBC multiplied by 3; and

(B) triggers the trend test determined in accordance with the trend test calculation included in the RBC instructions;

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subsection (1)(a) if the insurer does not challenge the adjusted RBC report under 33-2-1908 or if the commissioner has rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that must:

(a) identify the conditions that contribute to the company action level event;

(b) contain proposals of corrective actions that the insurer intends to take and that would be expected to result in the elimination of the company action level event;

(c) provide projections of the insurer's financial results in the current year and at least the next 4 years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for

both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(d) identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) identify the quality of and problems associated with the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan must be submitted:

(a) within 45 days of the company action level event; or

(b) if the insurer challenges an adjusted RBC report pursuant to 33-2-1908, within 45 days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within 60 days after ~~the submission by~~ an insurer ~~of~~ *submits* an RBC plan to the commissioner, the commissioner shall notify the insurer as to whether the RBC plan may be implemented or is unsatisfactory in the judgment of the commissioner. If the commissioner determines that the RBC plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may ~~set forth proposed~~ *propose* revisions ~~that will~~ *intended to* render the RBC plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) within 45 days after the notification from the commissioner; or

(b) if the insurer challenges the notification from the commissioner under 33-2-1908, within 45 days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) ~~In the event of a notification by~~ *If* the commissioner ~~to~~ *notifies* an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, at the commissioner's discretion, subject to the insurer's right to a hearing under 33-2-1908, specify in the notification that the notification constitutes a regulatory action level event.

(6) Each domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) the state has an RBC provision substantially similar to 33-2-1909(1); and

(b) the insurance commissioner of that state has notified the insurer in writing of its request for the filing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state by the later of:

(i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with that state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4)."

Section 11. Section 33-4-309, MCA, is amended to read:

"33-4-309. Directors — election and term. (1) Directors of a farm mutual insurer ~~shall~~ *must* be elected by its members by ballot *or acclamation* for terms not to exceed 3 years and ~~shall~~ hold office until their respective successors are elected and have qualified.

(2) ~~No~~ *An* individual ~~shall~~ *may not* serve as a director unless *the individual is* a member of the insurer."

Section 12. Section 33-18-605, MCA, is amended to read:

"33-18-605. Use of credit information. (1) An insurer authorized to do business in this state that uses credit information to underwrite or rate risks may not:

(a) use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

(b) deny, cancel, or not renew a policy of personal insurance on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (1)(a);

(c) base an insured's renewal rates for personal insurance upon credit information without consideration of any other applicable factor independent of credit information;

(d) take an adverse action against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information;

(e) consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(i) treats the consumer as otherwise approved by the commissioner if the insurer presents information that the absence or inability relates to the risk for the insurer;

(ii) treats the consumer as if the consumer had neutral credit information, as defined by the insurer; or

(iii) excludes the use of credit information as a factor and uses only other underwriting criteria;

(f) take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first written or renewal is issued;

(g) use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection (1)(g):

(i) at annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(ii) the insurer has the discretion to obtain current credit information upon any renewal before the 36 months provided for in *this* subsection (1)(g), if consistent with its underwriting guidelines;

(iii) an insurer may but does not have to obtain current credit information for an insured, despite the requirements of subsection (1)(g)(i), if one of the following applies:

(A) the insurer is treating the consumer as otherwise approved by the commissioner;

(B) the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers;

(C) credit was not used for underwriting or rating the insured when the policy was initially written;

(D) the insurer reevaluates the insured beginning not later than 36 months after inception and at similar succeeding times based upon other underwriting or rating factors, excluding credit information.

(h) use a credit *report or an insurance* score that treats any of the following as a negative factor for the purpose of underwriting or rating a policy of personal insurance:

(i) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information;

(ii) inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(iii) collection accounts with a medical industry code, if so identified on the consumer's credit report;

(iv) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered;

(v) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered;

(vi) the number of credit inquiries;

(vii) the consumer's use of a particular type of credit card, charge card, or debit card or the number of credit cards obtained by a consumer;

(viii) a loan if information from the credit report makes it evident that the loan is for the purchase of an automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the total number of loans, or both.

(ix) the consumer's total available line of credit or total debt. However, an insurer may consider:

(A) the consumer's bill payment history on the debt; or

(B) the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.

(2) (a) An insurer shall, on written request from an applicant or an insured, provide reasonable underwriting or rating exceptions for a consumer whose credit report has been directly affected by an extraordinary event.

(b) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to consider repeated extraordinary events or extraordinary events the insurer reconsidered previously.

(c) An insurer may also consider granting an exception to a consumer for an extraordinary event not listed in this section.

(d) An insurer may not be considered to be out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection (2).

(e) As used in this subsection (2), "extraordinary event" means:

(i) expenses related to a catastrophic injury or illness;

(ii) temporary loss of employment;

(iii) death of an immediate family member; or

(iv) theft of identity pursuant to 45-6-332."

Section 13. Section 33-22-508, MCA, is amended to read:

"33-22-508. Conversion on termination of eligibility. (1) A group disability insurance policy or certificate of insurance ~~delivered or issued for delivery or renewed after October 1, 1981,~~ must contain a provision that if the insurance or any portion of the insurance on a person or the person's dependents or family members covered under the policy ceases because of termination of the person's membership in a group eligible for coverage under the policy, because of termination of the person's employment, as a result of a person's employer discontinuing the employer's business, or as a result of a person's employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan and if the person had been insured for a period of 3 months and ~~the person~~ is not insured under another major medical disability insurance policy or plan, the person is entitled to have issued to the person by the insurer, without evidence of insurability, group disability coverage or an individual disability policy or, in the absence of an individual disability policy issued by the insurer, a group disability policy issued by the insurer on the person or on the person's dependents or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of the group coverage.

(2) A group insurer may meet the requirements of this section by contracting with another insurer to issue conversion policies as described in subsections (5) and (6). The conversion carrier must be authorized to act as an insurer in this state, and the commissioner shall approve the conversion policies pursuant to 33-1-501.

(3) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity. In addition, the insurer or conversion carrier shall make available a conversion policy as required by subsection (6).

(4) The premium for the individual policy or group policy must be at no more than 200% of the insurer's customary rate applicable to the group policy being terminated at the time of the conversion. If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate of the policy being terminated at the time of the conversion. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(5) A conversion carrier shall offer an individual or group conversion policy that provides the same schedule of benefits and covers the same eligible expenses as those being terminated. The premium for the policy must be calculated as described in subsection (4).

(6) The insurer or conversion carrier shall also make available a conversion policy, certificate, or membership contract that provides at least the level of benefits provided by the insurer's lowest cost basic health benefit plan, as defined in 33-22-1803. ~~If the insurer or conversion carrier is not a small employer carrier under part 18, the insurer shall make available a conversion policy, certificate, or membership contract that provides equivalent benefits to a basic health benefit plan as provided in 33-22-1827.~~ The conversion rate may not

exceed 150% of the highest rate charged for that plan. This subsection does not apply to disability plans that provide only excepted benefits as defined in 33-22-140.

(7) The effective date and time of the conversion policy must be established to ensure that there is no break in coverage between the termination of the group policy coverage and the inception of the conversion policy."

Section 14. Section 33-22-1803, MCA, is amended to read:

"33-22-1803. Definitions. As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier's standard benefit plan ~~and that provides the benefits required by 33-22-1827~~.

(6) "Benefit value" means a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based method and must take into account all health care expenses covered by the health benefit plan and all cost-sharing features of the health benefit plan, including deductibles, coinsurance, copayments, and the insured individual's maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.

(7) "Bona fide association" means an association that:

(a) has been actively in existence for at least 5 years;

(b) was formed and has been maintained in good faith for purposes other than obtaining insurance;

(c) does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(d) makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; and

(e) does not make health insurance coverage offered through the association available other than in connection with a member of the association.

(8) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(9) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(10) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(11) "Dependent" means:

(a) a spouse;

(b) an unmarried child under 25 years of age:

(i) who is not an employee eligible for coverage under a group health plan offered by the child's employer for which the child's premium contribution amount is no greater than the premium amount for coverage as a dependent under a parent's individual or group health plan;

(ii) who is not a named subscriber, insured, enrollee, or covered individual under any other individual health insurance coverage, group health plan, government plan, church plan, or group health insurance;

(iii) who is not entitled to benefits under 42 U.S.C. 1395, et seq.; and

(iv) for whom the parent has requested coverage;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(12) (a) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term also includes those persons eligible for coverage under 2-18-704.

(b) The term does not include an employee who works on a part-time, temporary, or substitute basis.

(13) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(14) (a) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract.

(b) The term does not include coverage of excepted benefits, as defined in 33-22-140, if coverage is provided under a separate policy, certificate, or contract of insurance.

(15) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(16) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(17) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(18) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(19) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(20) "Small employer" means a person, firm, corporation, partnership, or bona fide association that is actively engaged in business and that, with respect to a calendar year and a plan year, employed at least two but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of a bona fide association.

(21) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(22) "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier ~~and that contains the provisions required pursuant to 33-22-1828~~."

Section 15. Section 33-22-1821, MCA, is amended to read:

"33-22-1821. Waiver of certain laws. ~~Except as provided in 33-22-1827, a~~ *A* small employer carrier may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from a basic health benefit plan delivered or issued for delivery in this state."

Section 16. Section 33-22-2002, MCA, is amended to read:

"33-22-2002. Small business health insurance pool — definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of directors of the small business health insurance pool as provided for in 33-22-2003.

(2) "Dependent" has the meaning provided in 33-22-1803.

(3) (a) "Eligible small employer" means an employer who is sponsoring or will sponsor a group health plan and who employed at least two but not more than nine employees during the preceding calendar year and who employs at least two but not more than nine employees on the first day of the plan year.

(b) The term includes small employers who obtain group health plan coverage through a qualified association health plan.

(4) "Employee" means an eligible employee as defined in 33-22-1803.

(5) "Group health plan" ~~has the meaning provided in 33-22-140.~~ *means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.*

(6) "Premium" means the amount of money that a health insurance issuer charges to provide coverage under a group health plan.

(7) "Premium assistance payment" means a payment provided for in 33-22-2006 on behalf of employees who qualify to be applied on a monthly basis to premiums paid for group health plan coverage through the purchasing pool or through qualified association health plans.

(8) "Premium incentive payment" means a payment provided for in 33-22-2007(1)(b) to eligible small employers who qualify under 33-22-2007 to be applied to premiums paid on a monthly basis for group health plan coverage obtained through the purchasing pool or through qualified association health plans.

(9) "Purchasing pool" means the small business health insurance pool.

(10) "Qualified association health plan" means a plan established by an association whose members consist of employers who sponsor group health plans for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to applicable employer group health insurance law and must receive approval from the commissioner to operate as a qualified association health plan for the purposes of this part.

(11) "Related employers" means ~~persons having a relationship as described in section 267 of the Internal Revenue Code, 26 U.S.C. 267.~~*:*

(a) affiliates or affiliated entities or persons who directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with a specified entity or person; and

(b) entities or persons that are eligible to file a combined or joint tax return for purposes of state taxation.

(12) "Tax credit" means a refundable tax credit as provided for in 33-22-2008.

(13) "Tax year" means the taxpayer's tax year for federal income tax purposes."

Section 17. Section 33-22-2004, MCA, is amended to read:

"33-22-2004. Powers and duties of board. (1) The board shall:

(a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive and premium assistance payments and that complies with the powers and duties provided for in this section;

(b) require employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;

(c) upon *timely* reapplication, give priority to employers and their employees who are already receiving the premium incentive payments and premium assistance payments~~;~~. *If the reapplication is more than 30 days late, the priority will not be given and the employer will be added to the waiting list provided for in 33-22-2008.*

(d) upon *timely* reapplication *as provided in subsection (1)(c)*, allow employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their employees if the number of their employees goes over the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;

(e) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive or premium assistance payment;

(f) adopt a premium incentive payment schedule that is based on a percentage of the employer's share of the premium and apply the schedule uniformly to all registered eligible small employers who join the purchasing pool or obtain qualified association health plan coverage;

(g) adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or, with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for employees;

(h) establish criteria for determining which employees will be eligible for a premium assistance payment and the amount that the employees will receive from among those eligible small employer groups that have registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool group health plan or qualified association health plan. However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility for employees is not limited to the waiver eligibility groups.

(i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;

(j) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;

(k) approve no more than six fully insured group health plans with different benefit levels that will be offered to employers participating in the purchasing pool;

(l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;

(m) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;

(n) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216, if it is in the best interests of the purchasing pool;

(o) comply with the participation requirements provided for in 33-22-1811;

(p) meet at least four times annually; and

(q) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.

(2) The board may:

(a) borrow money;

(b) enter into contracts with insurers, administrators, or other persons;

(c) hire employees to perform the administrative tasks of the purchasing pool;

(d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;

(e) set contribution levels for employers;

(f) at least 30 days before the end of the current fiscal year, request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the department of revenue for reimbursement of the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a fiscal year;

(g) at least 90 days before the end of the current fiscal year, request that funds be transferred from the funds allocated for tax credits to the funds appropriated for premium incentive payments and premium assistance payments if the number of eligible small employers seeking tax credits is insufficient to exhaust at least 90% of the funds allocated for tax credits during a fiscal year;

(h) seek other federal, state, and private funding sources;

(i) accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;

(j) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of employees, collect the

employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;

(k) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and

(l) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage."

Section 18. Section 33-22-2006, MCA, is amended to read:

"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for small employer health insurance premiums paid — eligibility for small group coverage — amounts. (1) An employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit under this part if the employer and any related employers:

(a) did not have more than the number of employees established for eligibility by the commissioner at the time of registering for premium incentive payments or premium assistance payments or a tax credit under 33-22-2008;

(b) provide or will provide a group health plan that meets the requirements of creditable coverage for the employer's and any related employer's employees;

(c) do not have delinquent state ~~income~~ tax liability owing to the department of revenue from previous years;

(d) have been registered as eligible small employer participants by the commissioner as provided in 33-22-2008; and

(e) do not have any employees, not including an owner, partner, or shareholder of the business, who received more than $75,000 in wages, as defined in 39-71-123, from the small employer or related employer in the prior tax year.

(2) An owner, partner, or shareholder of a business who received more than $75,000 in wages, as defined in 39-71-123, and those individuals' spouses who are employees are not eligible under this chapter for:

(a) any premium assistance payment. However, a premium incentive payment may be made for the premium share paid by the business for group health insurance coverage for:

(i) the owner, partner, or shareholder;

(ii) a spouse of those listed in subsection (2)(a)(i) who is also an employee of the business; or

(iii) dependents of those listed in subsection (2)(a)(i).

(b) a tax credit for group health insurance premiums paid by the business or the owner, partner, or shareholder for group health insurance coverage for the individual or the individual's dependents.

(3) An employee, including an owner, partner, or shareholder or any dependent of an employee, who is also eligible for the children's health insurance program provided for under Title 53, chapter 4, part 10, or medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance payment.

(4) The commissioner shall establish, by rule, the maximum number of employees that may be employed to qualify as a small employer under subsection (1). However, the number may not be less than two employees or more than nine employees. The maximum number may be different for

employers seeking premium incentive payments and premium assistance payments than for employers seeking a tax credit. The number must be set to maximize the number of employees receiving coverage under this part. The commissioner may not change the maximum employee number more often than every 6 months. If the maximum number of allowable employees is changed, the change does not disqualify registered employers with respect to the tax year for which the employer has registered.

(5) Except as provided in subsection (6), an eligible small employer may claim a tax credit in the following amounts:

(a) (i) not more than $100 each month for each employee and $100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is under 45 years of age; or

(ii) not more than $125 each month for each employee and $100 each month for each employee's spouse, if the employer covers the employee's spouse, if the average age of the group is 45 years of age or older; and

(b) not more than $40 each month for each dependent, other than the employee's spouse, if the employer is paying for coverage for the dependents, not to exceed two dependents of an employee in addition to the employee's spouse.

(6) An employer may not claim a tax credit:

(a) in excess of 50% of the total premiums paid by the employer for the qualifying small group;

(b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

(c) for premiums for which a deduction is claimed under 15-30-2131 or 15-31-114.

(7) An employer may not claim a premium incentive payment in excess of 50% of the total premiums paid by the employer for the qualifying small group."

Section 19. Section 33-22-2008, MCA, is amended to read:

"33-22-2008. Registration — funding limitations — transfers — maximum number — waiting list — information transfer for tax credits. (1) (a) Each eligible small employer that proposes to apply for premium incentive payments and premium assistance payments or a tax credit under this part must be registered each year with the commissioner.

(b) An eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's registration for the next year, the registration application must be renewed each year.

~~(c) The commissioner shall begin accepting renewal applications on October 1 of each year and stop accepting renewal applications on October 31 of each year.~~

~~(d)~~*(c)* The registration application must include the number of individuals covered, as of the date of the registration application, under the small group health plan for which the employer is seeking premium incentive payments and premium assistance payments or a tax credit. If, after the initial registration, the number of individuals increases, the employer may apply to register the additional individuals, but those additional individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available funds.

~~(e)~~*(d)* A small employer is not eligible to apply for premium incentive payments and premium assistance payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number that has been established in 33-22-2006 as the maximum number of employees an employer may have in order to qualify for registration for the time period in question.

~~(f)~~*(e)* An employer's decision to apply for premium incentive payments and premium assistance payments or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan or qualified association health plan renews its registration, whichever time period is less. An employer may choose to discontinue receiving any premium incentive payments and premium assistance payments or tax credits at any time.

(2) The commissioner shall register qualifying eligible small employers in the order in which applications are received and according to whether or not the application is for premium incentive payments and premium assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and maintain premium incentive payments and premium assistance payments for eligible small employers who have not sponsored group health plans that provide creditable coverage in the previous 2 years and who chose to join the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated to tax credits for eligible small employers who currently sponsor a small group health plan that provides creditable coverage. Funding may be transferred from the allocated fund for premium incentive payments and premium assistance payments to the general fund for tax credits or from the funds allocated for tax credits to the allocated fund for premium incentive payments and premium assistance payments if the board requests the transfer as provided in 33-22-2004 and the commissioner approves the request.

(3) (a) The maximum number of eligible small employers is reached when the anticipated amount of claims for premium incentive payments and premium assistance payments and tax credits has reached 95% of the amount of money allocated for premium incentive payments and premium assistance payments and tax credits.

(b) The commissioner may establish a waiting list for applicants that are otherwise qualified for registration but cannot be registered because of a lack of money or because the maximum number of eligible small employers has been reached.

(c) The commissioner shall mail to each employer registered under this section a notice of registration containing a unique registration number and indicating eligibility for either premium incentive payments and premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker, or other evidence of participation that may be publicly posted.

(d) The commissioner shall notify all persons who applied for registration and who were not accepted that they were not registered and the reason that they were not registered.

(4) A prospective participant shall apply for registration on a form provided by the commissioner. The prospective participant shall:

(a) provide the number of employees and whether the employer qualifies under 33-22-2006;

(b) provide information that is necessary to estimate the amount of the premium incentive payments and premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant, such as the ages of employees or dependents, relationships of employees' dependents, and information required by the department of public health and human services for determination of eligibility for premium assistance payments matched by federal funds;

(c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the income tax process or through premium incentive payments and premium assistance payments to be applied toward purchasing pool or eligible qualified association health plan coverage;

(d) indicate whether or not the employer previously sponsored a group health plan that provided creditable coverage and, if so, when and for how long; and

(e) provide any additional information determined by the commissioner to be necessary to support an application.

(5) Each year, small employer participants shall *timely* reregister with the commissioner in order to determine the participant's continued eligibility. *The commissioner shall accept applications for continued registration:*

(a) for purchasing pool participants at any time within 12 months of the initial registration approval or within the time period for renewal of the coverage under this part, whichever is longer;

(b) for tax credit participants on December 1 of each year. The commissioner shall stop accepting renewal applications for tax credit participants 60 calendar days later.

(6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.

(7) If the department of public health and human services receives approval for a section 1115 waiver as provided in 53-2-216, the commissioner shall work with the department of public health and human services with regard to eligibility determinations as required by federal law or waiver conditions."

Section 20. Section 33-28-102, MCA, is amended to read:

"33-28-102. Licensing — authority. (1) A captive insurance company, when permitted by its organizational document, may apply to the commissioner for a license to provide property insurance, casualty insurance, life insurance, disability income insurance, surety insurance, marine insurance, and health insurance coverage or a group health plan as defined in 33-22-140, except that:

(a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies and controlled unaffiliated business entities;

(b) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(c) an association captive insurance company may not insure any risks other than those of the members or affiliated companies of members;

(d) a captive insurance company or a branch captive insurance company may not:

(i) provide personal lines of insurance, including but not limited to motor vehicle or homeowner's insurance coverage or any component of those coverages;

(ii) accept or cede reinsurance except as provided in 33-28-203;

(iii) provide health insurance coverage or a group health plan unless the captive insurance company or branch captive insurance company is only providing health insurance coverage or a group health plan for the parent company and its affiliated companies; or

(iv) write workers' compensation insurance on a direct basis; and

(e) a protected cell captive insurance company may not insure any risks other than those of its ~~participant affiliated companies and controlled unaffiliated business entities~~ *participants*.

(2) A captive insurance company may not write any insurance business unless:

(a) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(b) its board of directors, board of managing members, or a reciprocal insurer's subscribers' advisory committee holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) ~~(i)~~ it appoints a registered agent to accept service of process~~;~~*,*

~~(ii)~~ *files* the name and contact information and any subsequent changes regarding the registered agent ~~are filed~~ with the commissioner~~;~~*,* and

~~(iii) it~~ agrees that whenever the registered agent cannot be found with reasonable diligence, the commissioner's office may act as an agent of the captive insurance company with respect to any action or proceeding and may be served in accordance with 33-1-603.

(3) (a) Before receiving a license, a captive insurance company shall:

(i) with respect to a captive insurance company formed as a business entity:

(A) file with the commissioner a certified copy of its organizational documents, a statement under oath of an officer of the business entity showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require;

(ii) with respect to a captive insurance company formed as a reciprocal insurer:

(A) file with the commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with any additional information that the commissioner may reasonably require.

(b) ~~In the event of any~~ *If there is a* subsequent material change in any of the items in the description provided for in subsection (3)(a), the captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until *the commissioner approves* a revision of the description ~~is approved by the commissioner~~. The captive insurance company shall inform the commissioner of any change in rates within 30 days of the adoption of the change.

(c) In addition to the information required by subsections (3)(a) and (3)(b), each applicant captive insurance company shall file with the commissioner evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, members, or industrial insureds as applicable; and

(v) any other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(d) In addition to the information required by this section, each applicant that is a protected cell captive insurance company shall file with the commissioner the following:

(i) a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner;

(ii) a statement acknowledging that all financial records of the protected cell captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner or the commissioner's designated agent;

(iii) all contracts or sample contracts between the protected cell captive insurance company and any participants; and

(iv) evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

(e) Information submitted pursuant to this subsection (3) must remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(i) the information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that the information sought is relevant to and necessary for the furtherance of the action or case, the information sought is unavailable from other nonconfidential sources, and a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner;

(ii) the commissioner may, in the commissioner's discretion, disclose the information to a public officer having jurisdiction over the regulation of insurance in another state or to a public official of the federal government, as long as the public official agrees in writing to maintain the confidentiality of the

information and the laws of the state in which the public official serves, if applicable, require the information to be and to remain confidential.

(4) (a) Each captive insurance company shall pay to the commissioner a nonrefundable fee of $200 for the examining, investigating, and processing of its application for license, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(b) The provisions of Title 33, chapter 1, part 4, apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each subsequent year of $300.

(5) If the commissioner is satisfied that the documents and statements that the applicant captive insurance company has filed comply with the provisions of this chapter and applicable provisions of Title 33, the commissioner may grant a license authorizing the company to do insurance business in this state. The license is effective until March 1 of each year and may be renewed upon proper compliance with this chapter."

Section 21. Section 33-28-107, MCA, is amended to read:

"33-28-107. Reports and statements. (1) A captive insurance company is not required to make an annual report except as provided in this section.

(2) (a) Except as provided in subsection (2)(b), on or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition in a form and manner as required by the commissioner, verified by oath of two of its executive officers.

(b) A pure captive insurance company, branch captive insurance company, or industrial insured captive company, excluding captive risk retention groups, may make written application for filing the required report on a fiscal yearend basis. If an alternative reporting date is granted:

(i) the required report is due 60 days after fiscal yearend; and

(ii) in order to provide sufficient information to support the premium tax return, a pure captive insurance company or industrial insured insurance company shall file a report acceptable to the commissioner prior to March 1 of each year for the prior calendar yearend.

(c) Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires the use of statutory accounting principles, with any necessary or useful modifications or additions required by the commissioner. The commissioner may also require the report to be supplemented by additional information.

(d) On or before March 1 of each year, each branch captive insurance company shall submit to the commissioner a copy of all reports and statements required to be filed under the laws in which the foreign captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

(3) The commissioner shall consider financial statements filed pursuant to this section as confidential.

(4) (a) Captive risk retention groups shall file reports and statements in accordance with Title 33, chapter 2, part 7, except that a captive risk retention

group may file using generally accepted accounting principles. The filing may include letters of credit that are established, issued, or confirmed by a bank chartered in this state, a member of the federal reserve system, or a bank chartered by another state if that state-chartered bank is acceptable to the commissioner.

~~(b) The commissioner may waive the RBC report required in 33-2-1903 for a captive risk retention group that files a report or statement pursuant to subsection (4)(a) or for a captive risk retention group that was formed in the last 2 years.~~

~~(c)~~*(b)* The filings in subsection (4)(a) are required on an annual and quarterly basis."

Section 22. Section 33-28-108, MCA, is amended to read:

"33-28-108. Examinations and investigations. (1) (a) ~~At least once in 3 years, or more frequently if the commissioner considers it prudent, the~~ *The* commissioner or some competent person appointed by the commissioner shall ~~visit each captive insurance company and thoroughly inspect and~~ examine ~~its~~ *the* affairs*, transactions, accounts, records, and assets of each captive insurance company as often as the commissioner considers advisable but no less frequently than every 5 years* ~~to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this chapter.~~

~~(b) The commissioner, upon application and in the commissioner's discretion, may enlarge the 3-year period to 5 years if the captive insurance company is:~~

~~(i) subject to a comprehensive annual audit during the 5-year period of a scope satisfactory to the commissioner; and~~

~~(ii) the audit is conducted by independent auditors approved by the commissioner~~.

~~(c)~~*(b)* The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) (a) Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in the commissioner's discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(b) Captive risk retention group reports produced pursuant to the examination requirements of this section are public writings as defined in 2-6-101.

(5) Except as provided in subsection (6), the provisions of this section apply to all business written by a captive insurance company.

(6) The examination for a branch captive insurance company may only be of branch business and branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107(2)(d) to the satisfaction of the commissioner.

(7) As a condition of licensure of a branch captive insurance company, the foreign captive insurance company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance company in the jurisdiction in which the foreign captive insurance company is formed."

Section 23. Section 33-28-207, MCA, is amended to read:

"33-28-207. Applicable laws. (1) The following apply to captive insurance companies:

(a) the definitions of commissioner and department provided in 33-1-202, property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage and group health plans provided in 33-22-140, and disability income insurance provided in 33-1-235;

(b) the limitation provided in 33-2-705 on the imposition of other taxes;

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13;

(d) the provisions of *33-1-311,* 33-1-603, 33-3-431, 33-18-201, 33-18-203, 33-18-205, and 33-18-242; ~~and~~ *and*

~~(e)~~*(e)* the provisions relating to dissolution and liquidation in Title 33, chapter 3, part 6*, except that a pure captive insurance company may proceed with voluntary dissolution and liquidation after prior notice to and approval of the commissioner without following the provisions of Title 33, chapter 3, part 6*.

(2) This chapter may not be construed as exempting a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance.

(3) A captive insurance company or branch captive insurance company that writes health insurance coverage or group health plans as defined in 33-22-140 shall comply with applicable state and federal laws.

(4) The following provisions apply to captive risk retention groups:

(a) those relating to actuarial opinions in Title 33, chapter 1, part 14;

(b) those relating to risk-based capital in Title 33, chapter 2, part 19; and

(c) those relating to insurance holding company systems in Title 33, chapter 2, part 11.

~~(4)~~*(5)* Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

Section 24. Repealer. The following sections of the Montana Code Annotated are repealed:

33-2-609. Excess deposits.

33-22-103. Violations.

33-22-1827. Benefits required in basic health benefit plan.

33-22-1828. Benefits required in standard benefit plan.

Section 25. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2011

CHAPTER NO. 228

[HB 279]

AN ACT PROVIDING DISASTER AND EMERGENCY SERVICES TO FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA; ALLOWING TRIBAL GOVERNMENTS TO REQUEST ASSISTANCE FROM THE GOVERNOR; AUTHORIZING EXPENDITURES WHEN JUSTIFIED BY A TRIBAL DISASTER OR EMERGENCY; REINSTATING SPENDING AUTHORITY WHEN EXPENDED FUNDS ARE RECOVERED; PROVIDING ASSISTANCE IN OBTAINING FEDERAL COMMUNITY DISASTER LOANS FOR TRIBAL GOVERNMENTS; PROVIDING FOR DEBRIS AND WRECKAGE REMOVAL FOR TRIBAL GOVERNMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 10-3-101, 10-3-103, 10-3-105, 10-3-310, 10-3-311, 10-3-313, 10-3-314, AND 10-3-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-101, MCA, is amended to read:

"10-3-101. Declaration of policy. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to ensure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or human-caused disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, ~~and~~ local governments*, and tribal governments* in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, mitigation, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state*,* ~~and~~ its political subdivisions*, and tribal governments* may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; and

(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in ~~either~~ state*, tribal government,* or federal emergency or disaster declarations."

Section 2. Section 10-3-103, MCA, is amended to read:

"10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction.

(4) "Disaster and emergency services" means the preparation for and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Disaster medicine" means the provision of patient care by a health care provider during a disaster or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and treatment of persons needing care.

(6) "Division" means the division of disaster and emergency services of the department.

(7) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize.

(8) (a) "Incident" means an event or occurrence, caused by either an individual or by natural phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life or damage to property or natural resources. The term includes the imminent threat of an emergency.

(b) The term does not include a state of emergency or disaster declared by the governor pursuant to 10-3-302 or 10-3-303.

(9) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(10) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or other chief executive officer of a political subdivision.

(11) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

(12) "Tribal government" means the government of a federally recognized Indian tribe within the state of Montana.

~~(12)~~*(13)* "Volunteer professional" means an individual with an active, unrestricted license to practice a profession under the provisions of Title 37, Title 50, or the laws of another state."

Section 3. Section 10-3-105, MCA, is amended to read:

"10-3-105. Division of disaster and emergency services — duties. (1) A division of disaster and emergency services is established in the department. The division must have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program must be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, *tribal governments,* and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program because of limitations of funding, personnel, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, *tribal governments,* and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of an actual incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time of an incident, emergency, or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with incidents, emergencies, and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) assume any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor."

Section 4. Section 10-3-310, MCA, is amended to read:

"10-3-310. Incident response — authority — appropriation — expenditures — recovery — rules. (1) The governor may by executive order upon request of the local governing body*,* ~~or~~ its authorized agent*, or a tribal government* activate that part of the state disaster and emergency plan pertaining to incident response. The order may be issued for any year, for any part of a year, or upon occurrence of an incident.

(2) Upon approval of an executive order pursuant to this section:

(a) that part of the state disaster and emergency plan pertaining to incidents becomes effective;

(b) the division may use any of the resources usable by the division during a state of emergency or disaster to respond to the incident; and

(c) there is statutorily appropriated, as provided in 17-7-502, to the office of the governor, and the governor is authorized to expend from the general fund an amount not to exceed $10,000 per incident and not to exceed $100,000 for incidents in a biennium.

(3) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, upon activation of the incident response portion of the state disaster and emergency plan. Money appropriated by this section may be used only for incident response costs of the state and may not be used to reimburse a local government *or tribal government* for incident response costs incurred by that local government *or tribal government*.

(4) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

(5) The department may adopt rules to implement this section."

Section 5. Section 10-3-311, MCA, is amended to read:

"10-3-311. Emergency or disaster expenditures — restrictions. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is

declared by the governor, to meet contingencies and needs arising from an emergency or disaster, as defined in 10-3-103, ~~which~~ *that* results in damage to the works, buildings, or property of the state*,* ~~or~~ any political subdivision ~~thereof~~ *of the state, or a tribal government* or ~~which~~ *that* menaces the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, *including an Indian reservation,* upon demonstration by the political jurisdiction*, including a tribal government,* that:

(a) ~~such~~ *the* political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in *a* sufficient amount to meet the emergency or disaster; or

(c) federal funds available for ~~such~~ *the* emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) ~~No expenditures~~ *Expenditures* for flood-related damages may *not* be made to assist a political subdivision *or tribal government* that is sanctioned because it has flood hazard areas identified under the national flood insurance program, parts 59 through 77 of 44 CFR, and does not have in effect adequate regulations for ~~such~~ *those* areas or has failed to enforce ~~such~~ regulations ~~as~~ required by the national flood insurance program.

(3) In the event of recovery of money expended pursuant to this section, the spending authority must be reinstated to the level reflecting the recovery.

~~(3)~~*(4)* The governor is charged with the implementation of the program.

~~(4)~~*(5)* The administration and development of rules for implementation of this section must be promulgated by the department."

Section 6. Section 10-3-313, MCA, is amended to read:

"10-3-313. Temporary housing for disaster victims — site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make the units available to any political subdivision of the state *or to any tribal government*;

(b) to assist any political subdivision of this state *or any tribal government* that is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for temporary housing and to do all things required to prepare the site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision *or tribal government* for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under regulations that the governor prescribes, to temporarily suspend or modify for not to exceed 60 days any state laws or regulations relating to public health, safety, zoning, or transportation, within or across the state, when

by proclamation the governor declares the suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, that are necessary to prepare or equip the sites to utilize the housing units.

(3) Parts 1 through 4 of this chapter may not be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery."

Section 7. Section 10-3-314, MCA, is amended to read:

"10-3-314. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon the governor's determination that a political subdivision of the state *or that a tribal government* will suffer a substantial loss of tax and other revenue from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision *or tribal government*, for a loan. The proceeds are statutorily appropriated, as provided in 17-7-502, to the governor, who may receive and disburse the proceeds of any approved loan to any applicant political subdivision *or tribal government*.

(2) to determine the amount needed by any applicant political subdivision *or tribal government* to restore or resume its governmental functions and to certify the same to the federal government. However, the application amount may not exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenue of the political subdivision *or tribal government* is insufficient to meet its operating expenses, including additional emergency-related or disaster-related expenses of the political subdivision *or tribal government*."

Section 8. Section 10-3-315, MCA, is amended to read:

"10-3-315. Debris and wreckage removal in emergencies or disasters. (1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage ~~which~~ *that* may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize ~~such~~ *the* funds to make grants to any political subdivision *or tribal government* for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) (a) Authority under this section ~~shall~~ *may* not be exercised unless the affected political subdivision, *tribal government,* corporation, organization, or individual ~~shall~~ first ~~present~~ *presents* an unconditional authorization for removal of ~~such~~ *the* debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, ~~shall~~ first ~~agree~~ *agrees* to indemnify the state government against any claim arising from ~~such~~ *the* removal.

(b) Whenever the governor provides for ~~clearance~~ *the clearing* of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or ~~clearance~~ *clearing* operation."

Section 9. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2011

CHAPTER NO. 229

[HB 469]

AN ACT CLARIFYING AND SIMPLIFYING THE NAME OF THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD; AMENDING SECTIONS 2-15-3110, 2-15-3111, 2-15-3112, 2-15-3113, AND 81-1-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature has been made aware that the name of the Livestock Loss Reduction and Mitigation Board is too long, too confusing, and does not adequately communicate the mission of the Board to the public; and

WHEREAS, the Legislature has been asked by Montana citizens to change the name of the Montana Livestock Loss Reduction and Mitigation Board to something simpler and better representative of the Board's public purpose; and

WHEREAS, the Legislature finds that it would be beneficial to the Board's mission and duties as that mission and duties are set forth in state law to change the name of the Livestock Loss Reduction and Mitigation Board to something simpler.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3110, MCA, is amended to read:

"2-15-3110. Livestock loss ~~reduction and mitigation~~ board — purpose, membership, and qualifications. (1) There is a livestock loss ~~reduction and mitigation~~ board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish, wildlife, and parks commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111."

Section 2. Section 2-15-3111, MCA, is amended to read:

"2-15-3111. Livestock loss reduction program. The livestock loss ~~reduction and mitigation~~ board shall establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf predation on livestock, including:

(1) eligibility requirements for program participation;

(2) application procedures for program participation and procedures for awarding grants for wolf predation prevention measures, subject to grant priorities and the availability of funds;

(3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;

(4) grant guidelines for prevention measures on public and private lands, including:

(a) grant terms that clearly set out the obligations of the livestock producer and that provide for a term of up to 12 months subject to renewal based on availability of funds, satisfaction of program requirements, and prioritization of the project;

(b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and

(c) proactive preventive measures, including but not limited to fencing, fladry, night penning, increased human presence in the form of livestock herders and riders, guard animals, providing hay and dog food, rental of private land or alternative pasture allotments, delayed turnouts, and other preventive measures as information on new or different successful prevention measures becomes available; and

(5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant."

Section 3. Section 2-15-3112, MCA, is amended to read:

"2-15-3112. Livestock loss mitigation program — definitions. The livestock loss ~~reduction and mitigation~~ board shall establish and administer a program to reimburse livestock producers for livestock losses caused by wolves, subject to the following provisions:

(1) The board shall establish eligibility requirements for reimbursement, which must provide that all Montana livestock producers are eligible for coverage for losses by wolves to cattle, swine, horses, mules, sheep, goats, llamas, and livestock guard animals on state, federal, and private land and on tribal land that is eligible through agreement pursuant to 2-15-3113(2).

(2) Confirmed and probable livestock losses must be reimbursed at an amount not to exceed fair market value as determined by the board.

(3) Other losses may be reimbursed at rates determined by the board.

(4) A claim process must be established to be used when a livestock producer suffers a livestock loss for which wolves may be responsible. The claim process must set out a clear and concise method for documenting and processing claims for reimbursement for livestock losses.

(5) A process must be established to allow livestock producers to appeal reimbursement decisions. A producer may appeal a staff adjuster's decision by notifying the staff adjuster and the board in writing, stating the reasons for the appeal and providing documentation supporting the appeal. If the documentation is incomplete, the board or a producer may consult with the U.S. department of agriculture wildlife services to complete the documentation. The board may not accept any appeal on the question of whether the loss was or was not a confirmed or probable loss because that final determination lies solely with the U.S. department of agriculture wildlife services and may not be changed by the board. The board shall hold a hearing on the appeal within 90 days of receipt of the written appeal, allowing the staff adjuster and the producer to present their positions. A decision must be rendered by the board within 30 days after the hearing. The producer must be notified in writing of the board's decision.

(6) As used in this section, the following definitions apply:

(a) "Confirmed" means reasonable physical evidence that livestock was actually attacked or killed by a wolf, including but not limited to the presence of bite marks indicative of the spacing of canine tooth punctures of wolves and associated subcutaneous hemorrhaging and tissue damage indicating that the attack occurred while the animal was alive, feeding patterns on the carcass, fresh tracks, scat, hair rubbed off on fences or brush, eyewitness accounts, or other physical evidence that allows a reasonable inference of wolf predation on an animal that has been largely consumed.

(b) "Fair market value" means:

(i) for commercial sheep more than 1 year old, the average price of sheep of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(ii) for commercial lambs, the average market weaning value;

(iii) for registered sheep, the average price paid to the specific breeder for sheep of similar age and sex during the past year at public or private sales for that registered breed;

(iv) for commercial cattle more than 1 year old, the average price of cattle of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(v) for commercial calves, the average market weaning value;

(vi) for registered cattle, the average price paid to the owner for cattle of similar age and sex during the past year at public or private sales for that registered breed;

(vii) for other registered livestock, the average price paid to the producer at public or private sales for animals of similar age and sex. A producer may provide documentation that a registered animal has a fair market value in excess of the average price, in which case the board shall seek additional verification of the value of the animal from independent sources. If the board determines that the value of that animal is greater than the average price, then the increased value must be accepted as the fair market value for that animal.

(viii) for other livestock, the average price paid at the most recent public auction for the type of animal lost or the replacement price as determined by the board.

(c) "Probable" means the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a particular species. A kill may be classified as probable depending on factors including but not limited to recent confirmed predation by the suspected depredating species in the same or a nearby area, recent observation of the livestock by the owner or the owner's employees, and telemetry monitoring data, sightings, howling, or fresh tracks suggesting that the suspected depredating species may have been in the area when the depredation occurred."

Section 4. Section 2-15-3113, MCA, is amended to read:

"2-15-3113. Additional powers and duties of livestock loss ~~reduction and mitigation~~ board. (1) The livestock loss ~~reduction and mitigation~~ board shall:

(a) process claims;

(b) seek information necessary to ensure that claim documentation is complete;

(c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;

(d) submit monthly and annual reports to the board of livestock summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;

(e) provide information to the board of livestock regarding appealed claims and implement any decision by the board;

(f) prepare the annual budget for the board; and

(g) provide proper documentation of staff time and expenditures.

(2) The livestock loss ~~reduction and mitigation~~ board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to 2-15-3111 and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to 2-15-3112.

(3) The livestock loss ~~reduction and mitigation~~ board shall:

(a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;

(b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;

(c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;

(d) adjudicate appeals of claims;

(e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;

(f) meet as necessary to conduct business; and

(g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in 2-15-3111 through 2-15-3113."

Section 5. Section 81-1-110, MCA, is amended to read:

"81-1-110. Livestock loss reduction and mitigation accounts. (1) There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111, except those appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of 2-15-3111 through 2-15-3113 must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) All federal funds awarded to the state for compensation for wolf depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of 2-15-3112.

(3) The livestock loss ~~reduction and mitigation~~ board may spend funds in the accounts only to carry out the provisions of 2-15-3111 through 2-15-3113."

Section 6. Name change — directions to code commissioner. Wherever a reference to the "livestock loss reduction and mitigation board" appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change it to a reference to the "livestock loss board".

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2011

CHAPTER NO. 230

[HB 548]

AN ACT REGARDING REVOCATION OF SUSPENSION OR DEFERRAL OF A CRIMINAL SENTENCE; PROVIDING THAT A PETITION FOR REVOCATION MAY BE FILED WITH A COURT EITHER BEFORE THE

PERIOD OF SUSPENSION OR DEFERRAL BEGINS TO RUN OR DURING THE PERIOD OF SUSPENSION OR DEFERRAL; AMENDING SECTION 46-18-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION.

WHEREAS, the Montana Supreme Court, in its opinion in State v. Stiffarm (2011) held that a petition for revocation of a suspended or deferred imposition of sentence must be filed during the period of suspension or deferral; and

WHEREAS, in its ruling in Stiffarm, the Supreme Court overruled several of its prior decisions allowing the filing of a petition for revocation before the period of suspension or deferral began; and

WHEREAS, in Stiffarm, the Supreme Court invited the Legislature to examine the issue and confirm or change the language of section 46-18-203(2), MCA, requiring that the petition be filed during the period of suspension or deferral; and

WHEREAS, the purpose of this legislation is to respond to the Court's invitation in Stiffarm by continuing the practice allowed by the Supreme Court's past decisions of allowing a petition for revocation to be filed either before or after a defendant begins serving the period of suspension or deferral but not later than the end of that period of suspension or deferral.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the offender has violated any condition of a sentence, any condition of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must require the offender to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

(2) The petition for a revocation must be filed with the sentencing court ~~during~~ *either before* the period of suspension or deferral *has begun or during the period of suspension or deferral but not after the period has expired*. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the offender must be brought before the judge, and the offender must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the offender's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified~~,~~ unless:

(a) the offender admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the offender for the purposes of this subsection (5)(b).

(6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of:

(i) the terms and conditions of the suspended or deferred sentence; or

(ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), or 45-5-625(4).

(b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or deferred sentence, the judge may:

(i) continue the suspended or deferred sentence without a change in conditions;

(ii) continue the suspended sentence with modified or additional terms and conditions;

(iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence; or

(iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time served in a detention center or home arrest time already served.

(c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in 46-23-1011.

(8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the offender, if in custody, must be immediately released.

(9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all past revocations, regardless of the date when a deferred or suspended sentence was ordered and regardless of the date of revocation.

Approved April 20, 2011

CHAPTER NO. 231

[HB 584]

AN ACT REVISING LICENSE PLATE LAWS; ALLOWING NEW STANDARD LICENSE PLATES TO BE OF CERTAIN PRIOR DESIGNS; AMENDING SECTIONS 61-3-301 AND 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) (a) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, a person may not operate a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer upon the public highways of Montana unless the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer is properly registered and has the proper license plates conspicuously displayed on the motor vehicle, trailer, semitrailer, pole trailer, or travel trailer. A license plate must be securely fastened to prevent it from swinging and may not be obstructed from plain view.

(b) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must have a single license plate displayed on the rear of the vehicle. A custom vehicle or street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod. All other motor vehicles must have one license plate displayed on the front and one license plate displayed on the rear of the motor vehicle.

(c) A person may not display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer at the same time a number assigned to it under any motor vehicle law except as provided in this chapter.

(2) A person may not purchase or display on a motor vehicle, trailer, semitrailer, pole trailer, or travel trailer a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county where the vehicle is domiciled or the county where the trailer, semitrailer, pole trailer, or travel trailer is domiciled at the time of application for registration.

(3) It is unlawful to:

(a) display license plates issued to one motor vehicle, trailer, semitrailer, pole trailer, or travel trailer on any other motor vehicle, trailer, semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute; *or*

(b) repaint old license plates to resemble current license plates~~; or~~

~~(c) display a prior design of standard license plates including military, veteran, and amateur radio license plates, or any license plates that have been issued for 5 or more years after the replacement of the license plates is required under 61-3-332(3)(a), except as provided in 61-3-332(3)(c) and (3)(d), 61-3-448, or 61-3-468~~.

(4) For the purposes of this section, "conspicuously displayed" means that the required license plates are obviously visible and firmly attached to:

(a) the front bumper and the rear bumper of a motor vehicle equipped with front and rear bumpers, except for a custom vehicle or street rod as provided in subsection (1)(b); or

(b) a clearly visible location on the rear of a trailer, semitrailer, pole trailer, or travel trailer."

Section 2. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) ~~Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.~~ *New license plates issued under 61-3-303 or this section must be a standard license plate design first issued within the last 35 years or current collegiate or generic speciality license plate designs. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.*

~~(ii)~~*(ii)* License plates issued on or after January 1, 2010, must be replaced with ~~the most recent design of standard license plates or a new replacement collegiate or generic speciality~~ *new* license ~~plate~~ *plates* if, upon renewal of registration under ~~61-3-332~~ *this section*, the license plates are 5 or more years old or will become older than 5 years during the registration period.

~~(iii) License~~ *New license* plates *must be* issued ~~on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate~~ in accordance with the implementation schedule adopted by the department under 61-3-315.

(iii) Until January 1, 2015, and upon payment of the fee required in 61-3-321(12)(b), a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor

vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 3. Effective date. [This act] is effective January 1, 2012.

Approved April 20, 2011

CHAPTER NO. 232

[SB 28]

AN ACT CLARIFYING THAT MENTAL HEALTH DIVERSION GRANT AWARDS ARE BASED ON ADMISSIONS TO THE MONTANA STATE HOSPITAL; AMENDING SECTION 53-21-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-1203, MCA, is amended to read:

"53-21-1203. State matching fund grants for county crisis intervention, jail diversion, precommitment, and short-term inpatient treatment costs. (1) As soon as possible after July 1 of each year, from funds appropriated by the legislature for the purposes of this section, the department shall grant to each eligible county state matching funds for:

(a) jail diversion and crisis intervention services to implement 53-21-1201 and 53-21-1202;

(b) insurance coverage against catastrophic precommitment costs~~,~~ if a county insurance pool is established pursuant to 2-9-211; and

(c) short-term inpatient treatment.

(2) Grant amounts must be based on available funding and the prospects that a county or multicounty plan submitted pursuant to subsection (3) will, if implemented, reduce admissions to the state hospital for emergency and court-ordered detention and evaluation and ultimately result in cost savings to the state. The department shall develop a sliding scale for state grants based upon the historical county use of the state hospital with a high-use county receiving a lower percentage of matching funds. The sliding scale must be based upon the number of ~~commitments~~ *admissions* by county compared to total ~~commitments~~ *admissions* and upon the population of each county compared to the state population.

(3) In order to be eligible for the state matching funds, a county shall, in the time and manner prescribed by the department:

(a) apply for the funds and include in the grant application a detailed plan for how the county and other local entities will collaborate and commit local funds for the mental health services listed in subsection (1);

(b) develop and submit to the department a county or multicounty jail diversion and crisis intervention services strategic plan pursuant to 53-21-1201 and 53-21-1202, including a plan for community-based or regional emergency and court-ordered detention and examination services and short-term inpatient treatment;

(c) participate in a statewide or regional county insurance plan for precommitment costs under 53-21-132~~,~~ if a statewide or regional insurance plan has been established~~,~~ as authorized under 2-9-211;

(d) participate in a statewide or regional jail suicide prevention program~~,~~ if one has been established by the department for the state or for the region in which the county is situated; and

(e) collect and report data and information on county jail diversion, crisis intervention, and short-term inpatient treatment services in the form and manner prescribed by the department to support program evaluation and measure progress on performance goals.

(4) The department shall adopt rules ~~by August 1, 2009,~~ *by August 1, 2011,* to implement the provisions of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2011

CHAPTER NO. 233

[SB 43]

AN ACT REVISING LAWS RELATED TO PRIMITIVE PARKS; REVISING THE LIST OF PRIMITIVE PARKS; REVISING THE TYPES OF DEVELOPMENT THAT MAY OCCUR IN PRIMITIVE PARKS; AND AMENDING SECTIONS 23-1-116, 23-1-117, AND 23-1-118, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-116, MCA, is amended to read:

"23-1-116. Primitive parks established. Because of their unique and primarily undeveloped character, the following state parks and management areas are designated as primitive parks and are subject to the provisions of 23-1-115 through 23-1-118:

~~(1) Big Pine management area;~~

~~(2) Thompson Falls state park;~~

~~(3)~~*(1)* Wild Horse Island state park;

(2) Big Pine management area;

(3) Sluice Boxes state park;

(4) Headwaters state park;

~~(4) Lost Creek state park;~~

~~(5) Painted Rocks state park;~~

~~(6) Ackley Lake state park;~~

~~(7) Sluice Boxes state park;~~

~~(8) Deadman's Basin state park;~~

~~(9)~~*(5)* Pirogue Island state park;

~~(10)~~*(6)* Medicine Rocks state park;

~~(11) Headwaters state park;~~

~~(12)~~*(7)* Council Grove state park;

~~(13)~~*(8)* Beaverhead Rock state park;

~~(14) Natural Bridge state park; and~~

(9) Tower Rock state park; and

~~(15)~~*(10)* Madison Buffalo Jump state park."

Section 2. Section 23-1-117, MCA, is amended to read:

"23-1-117. Limit on development of primitive parks. (1) ~~Except as permitted in Lost Creek state park for the limited purposes provided in subsection (3), the~~ *The* only development allowed in primitive parks designated in 23-1-116 is:

(a) ~~necessary~~ *necessary* improvements ~~required to meet minimum public health standards regarding~~ *required to meet minimum public health standards regarding* sanitation, which may include ~~necessary~~ *necessary* access to outhouses, *septic* vaults, and water;

(b) ~~improvements necessary to ensure the~~ *improvements necessary to ensure the* safe public ~~use of existing~~ *use of* boat ramps *and docks*;

(c) addition of gravel to existing unpaved roads and the resurfacing of paved roads when necessary to ensure safe public access;

(d) establishment of new ~~hiking~~ trails or improvement of ~~existing hiking~~ trails; ~~and~~

(e) development of camp host pads, which may include a septic vault and electrical service designed to serve only the camp host pads;

(f) any measures required for land management, including forestry; and

~~(e)~~*(g)* installation of minimal signage ~~indicating that the park is a designated primitive park in which development has been limited and~~ *indicating that the park is a designated primitive park in which development has been limited and* encouraging the public to help in maintaining the park's primitive character by packing out trash.

(2) The following development of designated primitive parks is prohibited:

(a) installation of electric lines or facilities, except when necessary to comply with subsection (1)(a) *or (1)(e)*;

(b) installation of recreational vehicle sanitary dumpsites where they do not presently exist; and

(c) creation of *unnecessary* new roads and paving of existing but previously unpaved roads.

~~(3) Lost Creek state park may be developed to include a camp host pad, with necessary water, electric, and sewage disposal facilities to meet minimum public health standards for the camp host. The camp host pad must be completed by September 30, 2007, and must be accomplished in the least intrusive manner possible in order to retain the primitive character of Lost Creek state park as a whole, in keeping with the spirit of the Montana Primitive Parks Act.~~"

Section 3. Section 23-1-118, MCA, is amended to read:

"23-1-118. Elimination of resident user fee — fee for nonresident use — penalty. (1) In recognition of the right of Montana residents to use primitive parks without regard to their ability to pay, a Montana resident is not required to pay a user fee for the use of any primitive park designated in 23-1-116~~, except that the department may charge camping fees at Thompson Falls state park and Headwaters state park~~*, except that the department may charge camping fees at Headwaters state park*.

(2) A nonresident who wishes to use a primitive park is required to pay the state park user fees chargeable under 23-1-105."

Approved April 20, 2011

CHAPTER NO. 234

[SB 52]

AN ACT PROHIBITING THE LEGISLATIVE AUDITOR FROM EMPLOYING AN AUDITOR UNLESS A BACKGROUND CHECK IS MADE ON THE PROSPECTIVE EMPLOYEE; PROHIBITING THE LEGISLATIVE AUDITOR FROM EMPLOYING A PERSON IF THE LEGISLATIVE AUDITOR DETERMINES THAT THE PERSON IS NOT APPROPRIATE FOR

EMPLOYMENT BY THE AUDITOR; AND AMENDING SECTION 5-13-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-13-305, MCA, is amended to read:

"5-13-305. Employees, consultants, and legal counsel — *background checks* — cure for impairment. (1) The legislative auditor may appoint and define the duties of employees and consultants who are necessary to carry out the provisions of this chapter~~,~~ within the limitations of legislative appropriations. The legislative auditor shall set the pay for employees in accordance with the rules for classification and pay adopted by the legislative council. The legislative auditor may employ legal counsel to conduct proceedings under this chapter.

(2) (a) The legislative auditor may not employ a prospective employee to conduct or supervise audits without conducting or having conducted a background check on the prospective employee. The background check must include a state and federal fingerprint-based check by the Montana department of justice and the federal bureau of investigation. When reporting the results of the background check, the Montana department of justice shall specifically report any previous conviction of the prospective employee for embezzlement or other financial crimes. The purpose of the background and fingerprint checks is to determine whether the prospective employee is an appropriate person to audit the records of one or more state agencies or programs.

(b) A copy of the results of the background check must be delivered to the legislative auditor. If the legislative auditor determines, based upon the results of the background and fingerprint checks, that a prospective employee is not an appropriate person to audit one or more state agencies or programs, the legislative auditor may not employ the prospective employee.

~~(2)~~*(3)* The legislative auditor shall inform the legislative council and the legislative audit committee in writing of an administrative policy or rule adopted under 5-11-105 that may impair the independence of the division, along with a statement of the reasons for the opinion and suggested changes to cure the impairment. The legislative council shall review the rule in question and adopt a revision that is generally applicable to the legislative branch and that is designed to cure the impairment. While the impairment exists, the legislative audit committee may adopt a specific exemption to the questioned rule that states the alternative rule to be employed under the exemption."

Approved April 20, 2011

CHAPTER NO. 235

[SB 68]

AN ACT CLARIFYING A DRIVER'S DUTY TO REMAIN AT THE SCENE OF AN ACCIDENT OR COLLISION INVOLVING DEATH, PERSONAL INJURY, OR DAMAGE TO A VEHICLE; CLARIFYING THE DRIVER'S DUTY TO PROVIDE CERTAIN INFORMATION AND RENDER AID; CLARIFYING THE PENALTIES FOR CERTAIN VIOLATIONS INVOLVING THE INJURY, SERIOUS BODILY INJURY, OR DEATH OF A PERSON OR THE STRIKING OF THE BODY OF A DECEASED PERSON; AMENDING SECTIONS 61-5-405, 61-7-101, 61-7-103, 61-7-105, 61-7-108, AND 61-7-118, MCA; AND REPEALING SECTION 61-7-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-405, MCA, is amended to read:

"61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d), of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, the definition of felony as provided in 45-2-101, and ~~61-7-103~~ *61-7-105*, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303);

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301); or

(c) convictions of careless driving resulting in death or reckless driving resulting in death.

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

Section 2. Section 61-7-101, MCA, is amended to read:

"61-7-101. Short title — *definition.* *(1)* This part will be cited as the "Uniform Accident Reporting Act".

(2) As used in this part, "accident" means any event in which a vehicle collides with any object, person, deceased person, or animal or any event in which a person is injured or killed or property damage is caused as a result of at least one vehicle's movement."

Section 3. Section 61-7-103, MCA, is amended to read:

"61-7-103. Accidents involving ~~death or personal injuries~~ *another person or deceased person*. ~~(1)~~ The driver of any vehicle *who knows or reasonably should have known that the driver has been* ~~involved~~ in an accident ~~resulting in injury to or death of any person~~ *with another person or a deceased person* shall immediately stop the vehicle at the scene of the accident or as close to the accident as possible but shall then return to and in every event remain at the scene of the accident until the driver has fulfilled the requirements of 61-7-105. Each stop at the scene of the accident must be made without obstructing traffic more than is necessary.

~~(2) (a) Except as provided in subsection (2)(b), a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment for a term of not less than 30 days or more than 1 year, by a fine of not less than $100 or more than $5,000, or by both fine and imprisonment.~~

~~(b) If the accident resulted in serious bodily injury or death of any person, a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, by a fine in an amount not to exceed $50,000, or by both fine and imprisonment.~~

~~(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of a person convicted of violating this section for the period prescribed in 61-5-205.~~"

Section 4. Section 61-7-105, MCA, is amended to read:

"61-7-105. Duty to give information and render aid. *(1)* The driver of any vehicle ~~involved in an accident resulting in injury to or death of any person or damage to any vehicle that is driven or attended by any person~~ *required to stop pursuant to 61-7-103* shall*:*

(a) give the driver's name, address, and the registration number of the vehicle the driver is driving and shall upon request and if available show a driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with~~. The driver shall~~*;*

(b) render to any person injured in the accident reasonable assistance, including the transporting or the making of arrangements for the transporting of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that the treatment is necessary or if transportation is requested by the injured person*; and*

(c) if any person in the accident is injured, deceased, or otherwise incapacitated or if notice is required pursuant to 61-7-108, remain at the scene of the accident until an on-duty peace officer with authority to investigate the accident gives the driver express permission to leave. This subsection (1)(c) does not apply when the driver reasonably believes it is necessary to leave the scene in order to seek emergency medical care for any person involved in the accident or to give notice to authorities pursuant to 61-7-108.

(2) A driver may not delegate to another the duties imposed under this section."

Section 5. Section 61-7-108, MCA, is amended to read:

"61-7-108. Immediate notice of accidents. The driver of a vehicle *who knows or reasonably should have known that the driver has been* involved in an accident resulting in injury to or death of any person*, striking the body of a deceased person,* or property damage to an apparent extent of $500 or more shall immediately by the quickest means of communication give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol."

Section 6. Section 61-7-118, MCA, is amended to read:

"61-7-118. Penalty for violation. (1) ~~A~~ *Except as provided in subsections (2) and (3), a* person violating any provision of ~~61-7-104~~ *61-7-103, 61-7-105* through 61-7-110*,* or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than $200 or more than $300 or by imprisonment for not more than 20 days. For a second conviction within 1 year of the first conviction, the offender shall be punished by a fine of not less than $300 or more than $400, by imprisonment for not more than 30 days, or both. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than $400 or more than $500, by imprisonment for not more than 6 months, or both.

(2) A driver failing to comply with any provisions of 61-7-103 or 61-7-105 in an accident resulting in injury to any person shall upon conviction be punished by imprisonment for a term of not less than 30 days or more than 1 year, by a fine of not less than $100 or more than $5,000, or by both fine and imprisonment.

(3) A driver failing to comply with any provision of 61-7-103 or 61-7-105 in an accident resulting in serious bodily injury, as defined in 45-2-101, or death of any person or resulting in the driver striking the body of a deceased person shall upon conviction be punished by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, by a fine in an amount not to exceed $50,000, or by both fine and imprisonment. Upon conviction, the department shall also revoke the driver's license, permit to drive, or any nonresident operating privilege for the period prescribed in 61-5-205.

~~(2)~~*(4)* Subject to the limitations of 46-18-231(3), an offender who fails to pay a fine shall be imprisoned in the county jail in the county in which the offense was committed, and the punishment must be commuted at the rate of 1 day's incarceration for each $75 of the fine."

Section 7. Repealer. The following section of the Montana Code Annotated is repealed:

61-7-104. Accident involving damage to vehicle.

Approved April 20, 2011

CHAPTER NO. 236

[SB 120]

AN ACT REQUIRING THAT CERTAIN INFORMATION ABOUT MEMBERS OF STATE AGENCY BOARDS, COMMITTEES, COMMISSIONS, AND ADVISORY COUNCILS BE PROVIDED FOR PUBLICATION IN OFFICIAL REPORTS AND BE PROVIDED ON WEBSITES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State agency board, committee, commission, or advisory council member information to be published. (1) Whenever a board, committee, commission, or advisory council of the executive, legislative, or judicial branch publishes a report, such as an audit report, program evaluation report, research report, or statutorily required report, the board, committee, commission, or advisory council shall publish in the report:

(a) the name of each board, committee, commission, or advisory council member;

(b) an address, telephone number, or e-mail address for each board, committee, commission, or advisory council member; and

(c) the term of each board, committee, commission, or advisory council member, including the date that the member's term expires.

(2) Each executive, legislative, and judicial branch board, committee, commission, or advisory council shall ensure that the information required under subsection (1) is readily available on a website.

(3) This section is not intended to apply to administrative documents, such as memoranda or letters.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 1, and the provisions of Title 2, chapter 15, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2011.

Approved April 20, 2011

CHAPTER NO. 237

[SB 278]

AN ACT PROVIDING FOR MEMBERSHIP SUBSCRIPTIONS FOR PRIVATE AIR AMBULANCE SERVICE; EXEMPTING CERTAIN PRIVATE AIR AMBULANCE SERVICES FROM INSURANCE LAWS; AMENDING SECTION 33-1-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, consumer expenses associated with life saving air ambulance service can be substantial and only a portion of the costs are typically eligible to be paid by insurers, leaving significant costs to the patient; and

WHEREAS, air ambulance service membership programs implemented in other states have provided protection to consumers from substantial out-of-pocket expenses for air ambulance services; and

WHEREAS, the Legislature believes it is appropriate to allow Montana consumers a choice on whether they want to participate in air ambulance service membership programs as a means to offset the costs of air ambulance services, while supporting the continued availability of these services in their communities.

Be it enacted by the Legislature of the State of Montana:

Section 1. Private air ambulance service — findings — exemptions from insurance code. (1) The legislature finds that there is a need to assist Montana consumers with regard to the availability and affordability of air ambulance service.

(2) A private air ambulance service that solicits membership subscriptions, accepts membership applications, charges membership fees, and provides air ambulance services to subscription members and designated members of their households is not an insurer as defined in 33-1-201, a health carrier as defined in 33-36-103, a health service corporation as defined in 33-30-101, or a health maintenance organization as defined in 33-31-102 if the private air ambulance service:

(a) is licensed in accordance with 50-6-306;

(b) has been in operation in Montana for at least 2 years; and

(c) has submitted evidence of its compliance with this section to the department.

(3) Any private air ambulance service membership program must have arrangements with other air ambulance service providers in Montana to the extent reasonably possible to ensure maximum geographic coverage within the state for the subscribers to the program.

Section 2. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) Except as otherwise provided in Title 33, chapter 22, this code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental

damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code.

(12) This code does not apply to private air ambulance services that are in compliance with [section 1] and that solicit membership subscriptions, accept membership applications, charge membership fees, and provide air ambulance services to subscription members and designated members of their households."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 6, part 3, and the provisions of Title 50, chapter 6, part 3, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 20, 2011

CHAPTER NO. 238

[SB 337]

AN ACT REVISING PROBATE LAWS REGARDING PLEADINGS, EVIDENCE, AND SUPERVISED ADMINISTRATION; PROVIDING PROVISIONS RELATED TO UNSWORN STATEMENTS; REVISING PROVISIONS RELATED TO THE VERIFICATION OF PLEADINGS; REQUIRING THAT AN AFFIDAVIT OR VERIFIED PETITION BE ACCEPTED AS EVIDENCE IN AN UNCONTESTED PROBATE OR TRUST PROCEEDING; REQUIRING PLEADINGS IN PROBATE PROCEEDINGS TO BE SIGNED BY AN ATTORNEY; REQUIRING THAT GUARDIANS, PERSONAL REPRESENTATIVES, AND CONSERVATORS ACKNOWLEDGE FIDUCIARY RESPONSIBILITIES; PROVIDING FOR PRESUMPTIVE ENTITLEMENT OF SUPERVISED ADMINISTRATION UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 1-1-203, 25-4-203, 72-1-206, AND 72-3-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-203, MCA, is amended to read:

"1-1-203. Terms relating to instruments and other writings. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Affidavit" means a sworn written declaration made before an officer authorized to administer oaths or an unsworn written declaration made under penalty of perjury as provided in [section 2].

~~(1)~~*(2)* "Execution" of an instrument means subscribing and delivering it, with or without affixing a seal.

~~(2)~~*(3)* "Folio", when used as a measure for computing fees, means 100 words, counting every two letters or numbers necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

~~(3)~~*(4)* "Printing" means the act of reproducing a design on a surface by any process.

~~(4)~~*(5)* "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs that person's own name as a witness.

~~(5)~~*(6)* "Subscribing witness" means a person who sees a writing executed or hears it acknowledged and at the request of the party signs the person's name as a witness.

~~(6)~~*(7)* "Writing" includes printing."

Section 2. Unsworn declarations — penalty of perjury. (1) Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by a person's sworn written declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved by an unsworn written declaration, certificate, verification, or statement that is subscribed by the person as true under penalty of perjury in substantially the following form:

(a) If executed within the state:

"I declare under penalty of perjury that the foregoing is true and correct.

....

Date and place Signature"

(b) If executed in any place outside the state:

"I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

....

Date and place Signature"

(2) A deliberate falsification in any declaration pursuant to this section constitutes the offense of perjury as provided in 45-7-201 and is punishable as the offense of false swearing as provided in 45-7-202. A declaration under penalty of perjury executed in accordance with any provision of this code is not limited to the official proceedings referenced in 45-7-201.

(3) This section does not apply to writings requiring an acknowledgment, deposition, oath of office, or oath required to be taken before a special official other than a notary public.

Section 3. Section 25-4-203, MCA, is amended to read:

"25-4-203. Verification of pleadings. (1) In any case in which ~~an affidavit of~~ *a* verification *by affidavit* is required, except as otherwise specifically provided, the ~~affidavit of verification~~ *verification by affidavit* must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters stated in the affidavit on information and belief, and that as to those the deponent believes it to be true. The verification must be made by the party or, if there are several parties united in interest or pleading, by ~~one~~ at least *one* of the parties acquainted with the facts if the party is in the county and capable of making the ~~affidavit~~ *verification*. The verification may also be made by the agent or attorney of the party if the party is absent from the county ~~where~~ *in which* the attorney resides or ~~is from~~ *if, for* any other cause*, the party is* unable to verify the pleading~~, and in~~. *In* that case, the verification must state that the deponent is the agent or attorney of the party, the reason why the verification is made by the agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information, and belief of the agent or attorney.

(2) When a corporation is a party, the verification may be made by any officer of the corporation and must state ~~what~~ the office of the officer ~~is~~ and that the matters stated in the verification are true to the best knowledge, information, and belief of the officer. If there is no officer of the corporation within the county, the verification may be made by the corporation's attorney."

Section 4. Section 72-1-206, MCA, is amended to read:

"72-1-206. Oath or affirmation on filed documents. *(1)* Except as otherwise specifically provided in this code ~~or by rule~~, every document filed with the court under this code, including applications, petitions, *reports, accounts, objections, responses,* and demands for notice, ~~shall be deemed to~~ *must* include an oath, affirmation, *declaration under penalty of perjury as provided in [section 2],* or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed~~;~~.

(2) A deliberate falsification ~~therein shall constitute~~ *of any document filed with the court pursuant to this section constitutes the offense of perjury and is punishable as* the offense of false swearing."

Section 5. Permitted pleadings — verification required. (1) The following pleadings are permitted in probate and trust proceedings:

(a) an application, petition, report, or account filed pursuant to this title; and

(b) an objection or response filed pursuant to this title to an application, petition, report, or account.

(2) Except as provided in 25-4-203 regarding verification by an agent or attorney, the verification must be made as follows:

(a) An application must be verified by the applicant or, if there are two or more parties joining the application, by any one of the applicants.

(b) A petition must be verified by the petitioner or, if there are two or more parties joining the petition, by any one of the petitioners.

(c) A report or account must be verified by the person who has the duty to make the report or account or, if there are two or more persons having a duty to make the report or account, by any one of the persons having the duty.

(d) An objection or response must be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any one of the objectors or respondents.

Section 6. Affidavit or verified petition as evidence in uncontested proceedings. In any probate or trust matter, an affidavit or verified petition must be received as evidence when offered in an uncontested proceeding under this title.

Section 7. Attorney signature — pleadings. In addition to the verification required by 25-4-203 and [section 5], every application and other pleading filed in connection with any probate or trust proceeding must be signed by the attorney of the person filing the pleading if the person is represented by an attorney. The verification must be made by the person executing or filing the document with the court as provided in [section 5].

Section 8. Acknowledgment of fiduciary relationship and obligations — personal representative, guardian, or conservator. (1) Every applicant for appointment as the personal representative of a decedent's estate, as a guardian, or as a conservator shall sign and verify before a notary public or under penalty of perjury the following statement:

"By signing, accepting, or acting under this appointment, I acknowledge that I will assume the duties and responsibilities of a fiduciary and that I must

work exclusively for the benefit of the decedent's estate and its beneficiaries, the ward under any guardianship, or the protected person under any conservatorship. I also acknowledge that the primary duty of a personal representative, guardian, or conservator is the duty of loyalty to and protection of the best interests of the estate, ward, or protected person. Therefore, I acknowledge that:

I may not use any of the property or other assets of the decedent's estate, ward, or protected person for my own personal benefit;

I must direct any benefit derived from this appointment to the decedent's estate, ward, or protected person; and

I must avoid conflicts of interest and must use ordinary skill and prudence in carrying out the duties of this appointment."

(2) The statement in subsection (1) must be sworn before a notary public or executed under penalty of perjury in the following format:

"I declare under penalty of perjury under the laws of the state of Montana that the foregoing is true and correct.

Signed this ... day of ....., 20....

.....

Signature of applicant"

(3) This section applies to all applications for appointment as a personal representative or as a special administrator under Title 72, chapter 3, parts 2, 3, 4, and 7.

Section 9. Section 72-3-401, MCA, is amended to read:

"72-3-401. Supervised administration — nature and purpose — *presumptive entitlement.* *(1)* Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.

(2) If a probate estate has not been closed within 3 years after the first appointment of a personal representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent is entitled to petition for supervised administration under this section and is presumptively entitled to receive an order for supervised administration. The burden of proof to show cause why supervised administration should not be granted is on the personal representative or administrator."

Section 10. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 1, chapter 6, and the provisions of Title 1, chapter 6, apply to [section 2].

(2) [Sections 5 through 8] are intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [sections 5 through 8].

Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 20, 2011

CHAPTER NO. 239

[SB 352]

AN ACT ALLOWING SPECIAL RISK CLASSIFICATIONS FOR PRIVATE PASSENGER AND COMMERCIAL AUTOMOBILE POLICIES TO BE BASED ON FAVORABLE AND ADVERSE INFORMATION CONTAINED IN AN EXPERIENCE RECORD; AND AMENDING SECTIONS 33-16-201 AND 33-18-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-16-201, MCA, is amended to read:

"33-16-201. Standards applicable to rates. The following standards apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates may not be excessive or inadequate, and they may not be unfairly discriminatory.

(b) A rate may not be held to be excessive unless the rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable.

(c) A rate may not be held to be inadequate unless the rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insurer using the rate or unless the rate is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2) (a) Consideration must be given, when applicable, to past and prospective loss experience within and outside this state, to revenue and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, considered relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent 5-year period for which experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of the insurer or group with respect to any kind of insurance or with respect to any subdivision or combination of insurance.

(4) *(a)* Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for ~~individual~~ *separate* risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations.

(b) Special risk classifications may be established *for private passenger automobile policies. Special risk classifications may be* based upon favorable

aspects of an ~~insured's~~ *insured individual's* claims history that is 3 years old or older. ~~However, a special risk classification~~ *Special risk classifications* may not be established based on ~~anything~~ adverse ~~to the insured in a~~ *information contained in an insured individual's* driving record that is 3 years old or older.

(c) Special risk classifications may be established for commercial automobile policies. Special risk classifications for commercial automobile policies may be based upon favorable aspects of an insured's claims history that is 5 years old or older. Special risk classifications for commercial automobile policies established for an insured's adverse loss experience may not use more than the most recent 5 years of claims history that is available.

(d) Classifications and modifications apply to all risks under the same or substantially the same circumstances or conditions.

(e) As used in subsection (4)(b), "private passenger automobile policy" means an automobile insurance policy issued to individuals or families but does not include policies known as commercial automobile policies."

Section 2. Section 33-18-210, MCA, is amended to read:

"33-18-210. Unfair discrimination and rebates prohibited — property, casualty, and surety insurances. (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other compensation to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained in the residential property, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) *(a)* An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual *under a private passenger automobile policy* based solely on adverse information contained in ~~a~~ *an individual's* driving record that is 3 years old or older. ~~However, an~~ *An* insurer may provide discounts to an insured *under a private passenger automobile policy* based on favorable aspects of an insured's claims history that is 3 years old or older.

(b) An insurer may not use more than the most recent 5 years of loss experience that is available when determining whether to refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available under a commercial automobile policy. An insurer may provide discounts to an insured under a commercial automobile policy based on favorable aspects of an insured's claims history that is 5 years old or older.

(c) As used in subsection (9)(a), "private passenger automobile policy" means an automobile insurance policy issued to individuals or families but does not include policies known as commercial automobile policies.

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault."

Approved April 20, 2011

CHAPTER NO. 240

[HB 51]

AN ACT MODIFYING THE PROCEDURES FOR PAYMENT OF ENERGY COST SAVINGS FROM PROJECTS FUNDED FROM ENERGY CONSERVATION PROGRAM BONDS; CREATING A DEBT SERVICE ACCOUNT; AMENDING SECTIONS 90-4-605, 90-4-612, AND 90-4-614, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-605, MCA, is amended to read:

"90-4-605. Preparation of energy conservation program. (1) The department shall identify buildings that have a potential for energy savings, based on age, energy use, function, and condition of the building. Upon request of the department, a state agency shall provide the department with information necessary to allow the department to comply with this requirement.

(2) Based on the criteria in subsection (1) and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money, the department shall select certain facilities for indepth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) *(a)* Upon completion of the energy analyses, the department shall identify estimated costs and savings to the state based on these analyses. ~~If the estimated savings are determined to be greater than the bond payment costs for a particular project, the~~

(b) The department shall notify the department of administration *of each project for which:*

(i) for projects to be funded with bond proceeds, the estimated savings are determined to be greater than the bond payment costs; and

(ii) for projects to be funded from the general fund or the energy conservation capital projects account, the estimated savings are determined to be greater than the cost of the project plus annual interest payments of 3% of the unpaid balance of the cost of the project.

(c) Upon receipt of the notification, the department of administration shall implement a design and construction project using bond proceeds *or funds from the general fund or the energy conservation capital projects account established in 90-4-617* for the costs of the project.

(4) The department shall compile a report that must include the following:

(a) a listing of contacts between the department and other state agencies;

(b) a summary of the department's review of agency requests and a selection of projects for indepth analysis;

(c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project; and

(d) a listing of additional projects under consideration, for which energy analyses have not been conducted.

(5) The department shall submit the report required by subsection (4) to the governor before September 1 of each even-numbered year."

Section 2. Section 90-4-612, MCA, is amended to read:

"90-4-612. Form — principal and interest — fiscal agent — deposit of proceeds. (1) Each series of energy conservation program bonds may be issued

by the board at the request of the department, in denominations and forms, whether payable to bearer or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at a rate or rates, maturing at times not exceeding 15 years from date of issue, subject to redemption at earlier times and prices and upon notice, and payable at the office of such fiscal agent of the state, as the board shall determine subject to the provisions of this section and 90-4-611.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The bonds and any interest coupons must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(3) The board may employ a fiscal agent to assist in the performance of its duties under this part.

(4) There is created an energy conservation program account within the state special revenue fund established in 17-2-102.

(5) All proceeds of bonds and notes issued under 90-4-611 must be deposited in the energy conservation program account, except that any premiums and accrued interest received must be deposited in the *energy conservation program* debt service ~~fund~~ *account* established in ~~17-2-102~~ *[section 4]*."

Section 3. Section 90-4-614, MCA, is amended to read:

"90-4-614. Appropriation of energy cost savings. (1) In preparing the executive budget each biennium, the governor shall include for each state agency *that is* participating in the state energy conservation program *using money from the sale of energy conservation program bonds*:

~~(a)~~ an estimate of the energy cost savings expected for that agency in each year of the biennium~~; and~~

~~(b) a projection of the debt service on energy conservation program bonds that should be apportioned to that agency in each year of the biennium. Debt service is zero after the term of bond repayment~~.

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and appropriate in the general appropriations act ~~the following:~~

~~(a)~~ authority for each participating state agency to transfer funds in an amount equal to the agency's ~~projected debt service~~ *energy cost savings* to the energy conservation program *debt service* account established in ~~90-4-612~~ *[section 4]. These transfers must be made for a period that is equal to the term of the bonds, plus 1 year.*~~; and~~

~~(b) authority for each participating state agency to transfer funds to the long-range building program fund in an amount equal to the difference between the estimated energy cost savings to the agency and the projected debt service apportioned to that agency.~~

(3) The current level utility appropriations of *each* state ~~agencies~~ *agency* participating in the energy conservation program must be reduced by the ~~sum of the amounts~~ *amount* appropriated in ~~subsections (2)(a) and (2)(b)~~ *subsection (2).*

(4) Each participating state agency shall transfer upon request of the department the ~~amounts~~ *amount* appropriated in accordance with subsection (2)."

Section 4. Energy conservation program debt service account. (1) There is an energy conservation program debt service account within the debt service fund type established in 17-2-102.

(2) The department shall transfer to the long-range building program account created in 17-7-205 money in the energy conservation debt service account that is in excess of the amount that may be needed to satisfy the principal and interest payments on the energy conservation program bonds.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 90, chapter 4, part 6, and the provisions of Title 90, chapter 4, part 6, apply to [section 4].

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved April 21, 2011

CHAPTER NO. 241

[HB 83]

AN ACT CREATING A PRESCRIPTION DRUG REGISTRY; PROVIDING DEFINITIONS; ESTABLISHING PRESCRIPTION DRUG REPORTING REQUIREMENTS; PROVIDING FOR THE USE OF PRESCRIPTION DRUG REGISTRY INFORMATION; PROVIDING FOR FEES TO FUND THE PROGRAM; ALLOWING SANCTIONS AND PENALTIES; PROVIDING FOR IMMUNITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 37-7-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 and 3 through 15] may be cited as the "Montana Patient Safety Act".

Section 2. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) The term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(11) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.

~~(11)~~*(12)* "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(12)~~*(13)* "Device" has the same meaning as defined in 37-2-101.

~~(13)~~*(14)* "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

~~(14)~~*(15)* "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

~~(15)~~*(16)* "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection ~~(15)(a), (15)(b), or (15)(c)~~ *(16)(a), (16)(b), or (16)(c).*

~~(16)~~*(17)* "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

~~(17)~~*(18)* "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

~~(18)~~*(19)* "Health care facility" has the meaning provided in 50-5-101.

~~(19)~~*(20)* (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

~~(20)~~*(21)* "Hospital" has the meaning provided in 50-5-101.

~~(21)~~*(22)* "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

~~(22)~~*(23)* "Long-term care facility" has the meaning provided in 50-5-101.

~~(23)~~*(24)* (a) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

~~(24)~~*(25)* "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

~~(25)~~*(26)* "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

~~(26)~~*(27)* "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

~~(27)~~*(28)* "Person" includes an individual, partnership, corporation, association, or other legal entity.

~~(28)~~*(29)* "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

~~(29)~~*(30)* "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

~~(30)~~*(31)* "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

~~(31)~~*(32)* "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

~~(32)~~*(33)* "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

~~(33)~~*(34)* "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

~~(34)~~*(35)* "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

~~(35)~~*(36)* "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

~~(36)~~*(37)* "Prescriber" has the same meaning as provided in 37-7-502.

~~(37)~~*(38)* "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 353.

~~(38)~~*(39)* "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

~~(39)~~*(40)* "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

~~(40)~~*(41)* "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

(42) "Registry" means the prescription drug registry provided for in [section 3].

~~(41)~~*(43)* "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

~~(42)~~*(44)* "Wholesale" means a sale for the purpose of resale."

Section 3. Prescription drug registry — purpose. (1) The board shall establish and maintain a prescription drug registry for the purpose of improving patient safety by:

(a) making a list of controlled substances prescribed to a patient available to the patient or to the patient's health care provider; and

(b) allowing authorized staff of the board who have signed appropriate confidentiality agreements to review the registry for possible misuse and diversion of controlled substances.

(2) The board shall electronically collect information on prescription drug orders involving controlled substances pursuant to [section 4] and shall disseminate information as provided in [sections 5 through 7].

Section 4. Prescription drug registry — reporting requirements. (1) Except as provided in subsection (2), each entity licensed by the board as a certified pharmacy or as an out-of-state mail order pharmacy that dispenses drugs to patients in Montana shall provide prescription drug order information for controlled substances to the registry by:

(a) electronically transmitting the information in a format established by the board unless the board has granted a waiver allowing the information to be submitted in a nonelectronic manner; and

(b) submitting the information in accordance with time limits set by the board unless the board grants an extension because:

(i) the pharmacy has suffered a mechanical or electronic failure or cannot meet the deadline for other reasons beyond its control; or

(ii) the board is unable to receive electronic submissions.

(2) This section does not apply to:

(a) a prescriber who dispenses or administers drugs to the prescriber's patients; or

(b) a prescription drug order for a controlled substance dispensed to a person who is hospitalized.

Section 5. Prescription drug registry review. The board may review the information in the registry for possible misuse and diversion of controlled substances prescribed and dispensed to a patient. The board may provide information about possible misuse or diversion to prescribers and dispensers as allowed by rule.

Section 6. Confidentiality. Patient information that is collected, recorded, transmitted, and stored for the registry is protected and may not be disclosed except as allowed in [section 7]. The board shall adopt rules to protect the confidentiality of the registry and to ensure that only authorized individuals have access to the registry.

Section 7. Providing prescription drug registry information. (1) Registry information is health care information as defined in 50-16-504 and is confidential. Except as provided in [section 5], the board is authorized to provide data from the registry, upon request, only to the following:

(a) a person authorized to prescribe or dispense prescription drugs if the person certifies that the information is needed to provide medical or pharmaceutical treatment to a patient who is the subject of the request and who is under the person's care or has been referred to the person for care;

(b) a prescriber who requests information relating to the prescriber's own prescribing information if the prescriber certifies that the requested information is for a purpose in accordance with board rule;

(c) an individual requesting the individual's registry information if the individual provides evidence satisfactory to the board that the individual requesting the information is the person about whom the data entry was made;

(d) a designated representative of a government agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense drugs, in order to conduct investigations related to a health care professional who is the subject of an active investigation for drug misuse or diversion;

(e) a county coroner or a peace officer employed by a federal, state, tribal, or local law enforcement agency if the county coroner or peace officer has obtained an investigative subpoena;

(f) an authorized individual under the direction of the department of public health and human services for the purpose of reviewing and enforcing that department's responsibilities under the public health, medicare, or medicaid laws; or

(g) a prescription drug registry in another state if the data is subject to limitations and restrictions similar to those provided in [sections 3 through 14].

(2) The board shall maintain a record of each individual or entity that requests information from the registry and whether the request was granted pursuant to this section.

(3) The board may release information in summary, statistical, or aggregate form for educational, research, or public information purposes. The information may not identify a person or entity.

(4) Information collected by or obtained from the registry may not be used:

(a) for commercial purposes; or

(b) as evidence in any civil or administrative action, except in an investigation and disciplinary proceeding by the department or the agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense prescription drugs.

(5) Information obtained from the registry in accordance with the requirements of this section may be used in the course of a criminal investigation and subsequent criminal proceedings.

(6) The board shall adopt rules to ensure that only authorized individuals have access to the registry and only to appropriate information from the registry. The rules must be consistent with:

(a) the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq.;

(b) administrative rules adopted in connection with that act;

(c) Article II, section 10, of the Montana constitution; and

(d) the privacy provisions of Title 50, chapter 16.

(7) The procedures established by the board under this section may not impede patient access to prescription drugs for legitimate medical purposes.

Section 8. Prescription drug registry — immunity. (1) A person or entity that complies with the reporting requirements of [section 4] is not subject to civil liability or other legal or equitable relief for reporting the information to the board.

(2) Unless a court of competent jurisdiction finds that a person or entity committed an unlawful act pursuant to [section 14], a person or entity in proper possession of information pursuant to [sections 1 through 15] is not subject to civil liability or other legal or equitable relief for any of the following acts or omissions:

(a) furnishing information pursuant to [sections 3 through 7];

(b) receiving, using or relying on, or not using or relying on information received pursuant to [sections 3 through 7]; or

(c) relying on information that was entered into the registry in error, was factually incorrect, or was released by the board to the wrong person or entity.

(3) The immunity provisions of this section do not apply to the board, a state agency, or any political subdivision of the state.

Section 9. Registry information retention — destruction. The board shall retain the information collected for the registry for up to 3 years, as established by rule. After 3 years, the board shall destroy the information unless it is being used as part of an active investigation.

Section 10. Administration of prescription drug registry. The board may hire or contract for other professional, technical, or clerical staff as necessary to operate the registry. A contractor shall comply with the provisions regarding confidentiality of prescription information in [sections 6 and 7] and is subject to the penalties specified in [section 14] for unlawful acts.

Section 11. Prescription drug registry — advisory group. (1) The board shall establish an advisory group to provide information and advice about the development and operation of the registry, including but not limited to information on:

(a) the criteria for reporting information from the registry to prescribers and pharmacists;

(b) the design and implementation of educational courses about the registry;

(c) standards for evaluating the effectiveness of the registry; and

(d) administrative rules for establishing and maintaining the registry.

(2) The advisory group consists of but is not limited to representatives of:

(a) health care licensing boards that oversee health care providers who have authority to prescribe or dispense drugs;

(b) associations that represent health care professionals who have authority to prescribe or dispense drugs;

(c) associations that advocate for patients;

(d) entities involved in tribal health services or issues; and

(e) the department of justice provided for in 2-15-2001.

(3) The advisory group may identify other individuals for appointment to the group.

(4) The board shall establish rules for the conduct of advisory group business.

(5) The advisory group may not receive or access confidential health care information contained in the registry.

Section 12. Prescription drug registry — funding. (1) Each person licensed under Title 37 who prescribes, dispenses, or distributes controlled substances shall pay to the board a nonrefundable fee that is set by rule and that may not exceed $15.

(2) The board may apply for any available grants and may accept gifts, grants, or donations to assist in establishing and maintaining the registry.

(3) Funds collected pursuant to [sections 3 through 15] must be deposited into a state special revenue account to the credit of the department. The money must be used to defray the expenses of the board in establishing and maintaining the registry and in discharging its administrative and regulatory duties under [sections 3 through 15].

Section 13. Rulemaking authority. The board shall adopt rules to carry out and enforce [sections 3 through 15], including but not limited to rules that:

(1) specify the type of information to be reported on prescription drug orders involving controlled substances;

(2) establish the requirements for transmitting from a pharmacy to the board prescription drug order information involving controlled substances;

(3) define the electronic format for submission of information;

(4) define the circumstances under which a pharmacy may receive a waiver from the requirement to submit information electronically;

(5) specify the procedure through which a pharmacy may request an extension of the time limit for submitting information;

(6) establish how a person or entity authorized to receive information from the registry may submit a request for the information;

(7) specify the ways in which the board may use records involving requests for registry information to document and report on statistics involving the registry;

(8) set the fees to be charged for establishing and maintaining the registry; and

(9) establish confidentiality provisions to ensure that the privacy of patient information is maintained.

Section 14. Unlawful acts — sanctions — civil penalties. (1) A pharmacist who fails to submit prescription drug order information to the board as required by [section 4] or who willfully submits incorrect prescription drug order information must be referred to the board for consideration of administrative sanctions.

(2) A person or entity authorized to possess registry information pursuant to [sections 5 through 7] who willfully discloses or uses the registry information in violation of [sections 5 through 7] or a rule adopted pursuant to [sections 3

through 15] must be referred to the appropriate licensing board or regulatory agency for consideration of administrative sanctions.

(3) In addition to the administrative sanction provided in subsection (2), a person or entity who willfully discloses or uses information from the registry in violation of [sections 5 through 7] or a rule adopted pursuant to [sections 3 through 15] is liable for a civil penalty of up to $10,000 for each violation.

(4) The board may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general shall petition the district court to impose, assess, and recover the civil penalty.

(5) An action under subsection (3) or to enforce [sections 3 through 15] or a rule adopted under [sections 3 through 15] may be brought in the district court of any county where a violation occurs or, if mutually agreed on by the parties in the action, in the district court of the first judicial district.

(6) Civil penalties collected pursuant to [sections 3 through 15] must be deposited into the state special revenue account created pursuant to [section 12] and must be used to defray the expenses of the board in establishing and maintaining the registry and in discharging its administrative and regulatory duties in relation to [sections 3 through 15].

Section 15. Report to legislature. The board shall provide a report to the appropriate interim committees of the legislature each interim, including but not limited to information on:

(1) the cost of establishing and maintaining the registry;

(2) any grants, gifts, or donations received to assist in establishing and maintaining the registry;

(3) how registry information was used; and

(4) how quickly the board was able to answer requests for information from the registry.

Section 16. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 17. Codification instruction. [Sections 1 and 3 through 15] are intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7, apply to [sections 1 and 3 through 15].

Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. Effective date. [This act] is effective July 1, 2011.

Section 20. Termination. [Section 12(1)] terminates July 1, 2015.

Approved April 21, 2011

CHAPTER NO. 242

[HB 91]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ELECTIONS; REVISING THE TIMELINE TO FILL VACANCIES IN THE STATE SENATE; REVISING PROCEDURES TO GIVE NOTICE OF SPECIAL ELECTIONS; REVISING PROCESSING AND RETENTION PROCEDURES FOR CERTAIN

VOTER RECORDS; REVISING PROCEDURES FOR CANDIDATE NOMINATION AND WITHDRAWAL; REVISING REQUIREMENTS TO APPOINT ELECTION JUDGES WHO REPRESENT DIFFERENT PARTIES IN CERTAIN SITUATIONS; REVISING PROCEDURES RELATING TO VOTING BY ABSENTEE BALLOT; REVISING ELECTION RECOUNT PROCEDURES; AMENDING SECTIONS 5-2-406, 13-1-106, 13-1-108, 13-1-303, 13-1-304, 13-2-108, 13-2-110, 13-2-112, 13-2-115, 13-2-122, 13-2-220, 13-2-222, 13-2-304, 13-2-511, 13-2-512, 13-3-105, 13-4-102, 13-4-207, 13-10-201, 13-10-203, 13-10-209, 13-10-211, 13-10-325, 13-10-404, 13-10-405, 13-12-202, 13-12-203, 13-12-207, 13-13-111, 13-13-112, 13-13-113, 13-13-114, 13-13-116, 13-13-118, 13-13-119, 13-13-201, 13-13-211, 13-13-212, 13-13-214, 13-13-222, 13-13-225, 13-13-241, 13-13-301, 13-13-602, 13-14-115, 13-14-117, 13-14-118, 13-14-212, 13-15-101, 13-15-107, 13-15-108, 13-15-112, 13-15-205, 13-15-206, 13-15-402, 13-15-404, 13-15-506, 13-16-201, 13-16-412, 13-16-419, 13-17-203, 13-17-503, 13-19-102, 13-19-106, 13-19-206, 13-19-301, 13-19-306, 13-19-307, 13-19-308, 13-19-309, 13-19-310, 13-19-311, 13-19-313, 13-25-101, AND 13-38-201, MCA; REPEALING SECTIONS 13-2-123, 13-13-231, AND 13-21-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-406, MCA, is amended to read:

"5-2-406. Elections to fill vacancies in senate. (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual may be appointed, pursuant to 5-2-402, if the legislature is called into special session. However, the appointment may run only until a person is elected to complete the term at the upcoming general election and sworn into office. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs ~~75~~ *85* days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election must be utilized.

(b) Whenever the vacancy occurs on or after the ~~75th~~ *85th* day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the secretary of state on or before the 85th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term."

Section 2. Section 13-1-106, MCA, is amended to read:

"13-1-106. Time of opening and closing of polls for all elections — exceptions. (1) Except as provided in subsections (2) and (3), polling places must be open from 7 a.m. to 8 p.m.

(2) A polling place having fewer than 400 registered electors must be open from *at least* noon to 8 p.m. or until all registered electors in any precinct have voted, at which time *that precinct in* the polling place must be closed immediately.

(3) If an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polling place must be opened and closed at the times set for the school election, as provided in 20-20-106."

Section 3. Section 13-1-108, MCA, is amended to read:

"13-1-108. Notice of special elections. Notice of any special election must be broadcast or published at least three times in the 4 weeks immediately preceding the ~~close of registration on radio or television as provided in 2-3-105 through 2-3-107 or~~ *election* in a newspaper of general circulation in the jurisdiction where the election will be held *or may be broadcast on radio or television as provided in 2-3-105 through 2-3-107*, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this section are fulfilled upon the third publication or broadcast of the notice."

Section 4. Section 13-1-303, MCA, is amended to read:

"13-1-303. Disposition of ballots and other election materials. (1) (a) Except for a federal election *and as provided in 13-15-301(2)*, the voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official *either* for a recount procedure *or to process provisional ballots*.

(b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.

(c) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:

(i) contest begun;

(ii) recount pending; or

(iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-402."

Section 5. Section 13-1-304, MCA, is amended to read:

"13-1-304. Duties of officials when election not held. If a scheduled election is not necessary or is canceled for any reason *specified in law*, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body."

Section 6. Section 13-2-108, MCA, is amended to read:

"13-2-108. Rulemaking for statewide voter registration list. (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

~~(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123;~~

~~(e)~~*(d)* technical security of the statewide voter registration database;

~~(f)~~*(e)* information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and

~~(g)~~*(f)* quality control measures for the system and system users.

(3) The rules adopted by the secretary of state must reflect that an elector who was properly registered prior to January 1, 2003, is considered a legally registered elector."

Section 7. Section 13-2-110, MCA, is amended to read:

"13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes. (1) An individual may apply for voter registration in person or by mail*, postage paid,* by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides.

~~(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed.~~

~~(3)~~*(2)* Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

~~(4)~~*(3)* Except as provided in subsection ~~(5)~~ *(4)*:

(a) an applicant for voter registration shall provide the applicant's *Montana* driver's license number; or

(b) if the applicant does not have a *Montana* driver's license, the applicant shall provide the last four digits of the applicant's social security number.

~~(5)~~*(4)* (a) If an applicant does not have a *Montana* driver's license or social security number, the applicant shall provide as an alternative form of identification:

(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) The alternative form of identification must be:

(i) an original version presented to the election administrator if the applicant is applying in person; or

(ii) a copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.

~~(6)~~*(5)* (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted

under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection ~~(4)~~ *(3)* or ~~(5)~~ *(4)* or if the information provided was incorrect or insufficient to verify the individual's identity or eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

~~(7)~~*(6)* Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

~~(8)~~*(7)* The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

~~(9)~~*(8)* The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law."

Section 8. Section 13-2-112, MCA, is amended to read:

"13-2-112. Register of electors to be kept. Each election administrator shall keep an official register of electors in the ~~manner that the administrator considers most efficient~~ *statewide voter registration database*. The original signed registration form for each elector must be ~~filed alphabetically in a separate file for each precinct~~ *scanned, and the scanned copy must be retained in the statewide voter registration database. The original paper copy must be kept according to the state records retention schedule for such records.* ~~Additional files and records may be established for convenience.~~ The information recorded in the official register of electors and the design of the registration forms must be prescribed by the secretary of state *in the statewide voter registration database*."

Section 9. Section 13-2-115, MCA, is amended to read:

"13-2-115. Certification of statewide voter registration list — local lists to be prepared. (1) ~~Immediately after regular registration is closed under 13-2-301, the secretary of state shall certify the official statewide voter registration list.~~ *No later than 5 working days after the deadline prescribed in 13-2-301(3), election administrators shall enter all voter registration applications that were submitted within the deadline for regular registration into the statewide voter registration database.*

(2) The secretary of state shall certify the official statewide voter registration list by utilizing the information in the statewide voter registration database.

~~(2)~~*(3)* Each election administrator shall have printed from the certified statewide voter registration database lists of all registered electors in each precinct in the county. Except as provided in subsections ~~(5)~~ *(6)* and ~~(6)~~ *(7)*, names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used.

~~(3)~~*(4)* A copy of the list of registered electors in a precinct must be displayed at the precinct's polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

~~(4)~~*(5)* Lists of registered electors need not be printed if the election will not be held.

~~(5)~~*(6)* If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's

spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names.

~~(6)~~*(7)* (a) Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:

(i) proves to the election administrator, as provided in subsection ~~(6)(b)~~ *(7)(b)*, that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, as provided in subsection ~~(6)(c)~~ *(7)(c)*, that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction."

Section 10. Section 13-2-122, MCA, is amended to read:

"13-2-122. Charges for registers, elector lists, and mailing labels made available to public. (1) Except as provided in subsection (2), upon ~~written~~ request, the secretary of state ~~or a local election administrator~~ shall furnish to any ~~elector~~ *individual*, for noncommercial use, ~~a copy of the official precinct registers, a current list of legally registered electors, or mailing labels for registered electors~~ *available extracts and reports from the statewide voter registration database. Upon request, a local election administrator shall furnish to an individual, for noncommercial use, a copy of the official precinct registers, a current list of legally registered electors, mailing labels for registered electors, or other available extracts and reports.* Upon delivery, the secretary of state or the local election administrator may collect a charge not to exceed the actual cost of the register, list, ~~or~~ mailing labels*, or available extracts and reports*.

(2) For an elector whose address information is protected from general distribution under 13-2-115~~(5) or~~ (6) *or (7)*, the secretary of state or a local election administrator may not include the elector's residential address on any register, list, ~~or~~ mailing labels*, or available extracts and reports* but may list only the elector's name."

Section 11. Section 13-2-220, MCA, is amended to read:

"13-2-220. Maintenance of active and inactive voter registration lists for elections — rules by secretary of state. (1) The rules adopted by the secretary of state under 13-2-108 must include the following procedures, *at least one of* which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to

confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election*, applicants who failed to provide required information on registration cards, and provisionally registered electors* by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) An individual who submits an application for an absentee ballot for a federal general election or who completes and returns the address confirmation notice specified in 13-13-212(4) during the calendar year in which a federal general election is held is not subject to the procedure in subsection (1)(c) unless the individual's ballot for a federal general election is returned as undeliverable and the election administrator is not able to contact the elector through the most expedient means available to resolve the issue.

~~(2)~~*(3)* Any notices returned *as undeliverable* to the election administrator *or any notices to which the elector fails to respond* after ~~using~~ *the election administrator uses* the procedures provided in subsection (1) must be followed *within 30 days* by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the *final* confirmation notice, the election administrator shall move the elector to the inactive list.

~~(3)~~*(4)* A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.

~~(4)~~*(5)* An elector's registration may be reactivated pursuant to 13-2-222 or may be canceled pursuant to 13-2-402."

Section 12. Section 13-2-222, MCA, is amended to read:

"13-2-222. Reactivation of elector. (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:

(a) appears at a polling place in order to vote, ~~votes~~ *submits an application to vote* by absentee ballot in a polling place election or mail ballot election, or votes in a mail ballot election conducted under Title 13, chapter 19;

(b) notifies the county election administrator in writing of the elector's current residence, which must be in that county; or

(c) completes a reactivation form provided by the county election administrator that provides current address information in that county.

(2) After an elector has complied with subsection (1)(a), (1)(b), or (1)(c), the county election administrator shall place the elector's name on the active voting list for that county.

(3) An elector reactivated pursuant to subsection (1)(a) is a legally registered elector for purposes of the election in which the elector voted."

Section 13. Section 13-2-304, MCA, is amended to read:

"13-2-304. Late registration — late changes — nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector obtains the ballot from and returns it to the location designated by the county election administrator.

(2) If an elector has already been ~~sent an absentee~~ *issued a* ballot for the election, the elector may change the elector's voter registration information only ~~with respect to the next election~~ *if the original voted ballot has not been received at the county election office and if the original ballot that was issued is marked by the issuing county as void in the statewide voter registration database prior to the change*.

(3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20."

Section 14. Section 13-2-511, MCA, is amended to read:

"13-2-511. Transferring registration or changing name. An elector shall notify the election administrator *in a written communication signed by the elector* of a change in residence within the county or a change in name ~~by using a transfer form provided by the election administrator or by completing the changed information on a registration or mail registration form. The form must be signed and affirmed or verified as required on the form. If a registration or mail registration form is used, it must be clearly marked "for transfer of address" or "for change of name" in a space provided on the form for that purpose~~."

Section 15. Section 13-2-512, MCA, is amended to read:

"13-2-512. Right to vote when precinct or name changed — change of status. (1) An elector who has changed residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote ~~in the precinct~~ *at the polling place or by absentee or mail ballot in the precinct* where the elector is registered at the first election at which the elector offers to vote after the change or at a central location designated by the election administrator unless the elector's registration has been canceled as provided in 13-2-402.

(2) An elector who still resides in the same precinct where registered, whose name has changed, and who has failed to notify the election administrator of the change by a new registration form may vote under the elector's former name at the first election at which the elector offers to vote after the change unless the elector's registration has been canceled as provided in 13-2-402.

(3) The elector shall state the elector's correct residence address and name when offering to vote and shall complete a transfer form or new registration form to make the necessary correction before being allowed to ~~sign the precinct register and~~ vote *in a polling place election or by absentee or mail ballot*."

Section 16. Section 13-3-105, MCA, is amended to read:

"13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place must be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 days or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice must be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any ~~publicly owned~~ building may be used as a polling place. The building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

(5) The exterior of the voting systems, or of the booths in which they are placed, and every part of the polling place must be in plain view of the election judges."

Section 17. Section 13-4-102, MCA, is amended to read:

"13-4-102. Manner of choosing election judges. (1) Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges must be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges must include judges representing all parties that have submitted lists as provided in subsection (1). No more than the number of election judges needed to obtain a simple majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list *meeting the requirements of this section*, the governing body shall, to the extent possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list *meeting the requirements of this section*, the election administrator may select enough people meeting the qualifications of 13-4-107 to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-103."

Section 18. Section 13-4-207, MCA, is amended to read:

"13-4-207. Judges to remain at polls — emergency provisions — part-time service. (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge *or one who fails to appear*.

(5) The election administrator may assign a judge or chief election judge to work less than a full polling day, but at least three judges, including a chief election judge, must be on duty during the time that the polls are open."

Section 19. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination. (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. ~~A~~ *Except for a candidate who files under 13-38-201, a* candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the secretary of state, the declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) (a) Except as provided in 13-10-211 and subsection (6)(b) of this section, a candidate's declaration for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1)~~,~~ *or for a political subdivision that holds an election on the date of either of those elections,* a candidate's declaration for nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 20. Section 13-10-203, MCA, is amended to read:

"13-10-203. Indigent candidates. If an individual is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(1) from a successful write-in candidate, a ~~verified~~ statement that the candidate is unable to pay the filing fee;

(2) from a candidate for nomination, a ~~verified~~ statement that the candidate is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(a) the petition contains the name of the office to be filled and the candidate's name and residence address;

(b) the petition contains signatures numbering 5% or more of the total vote cast for the successful candidate for the same office at the last general election;

(c) the signatures are those of electors residing within the political subdivision of the state in which the candidate petitions for nomination; and

(d) the signatures have been *submitted to the appropriate election administrator at least 1 week prior to the applicable deadline in 13-10-201(6) and have been* certified by the appropriate election administrator by the procedure provided in 13-27-303 and 13-27-304."

Section 21. Section 13-10-209, MCA, is amended to read:

"13-10-209. Arrangement and preparing of primary ballots. (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots, except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

(i) each section is clearly identified as separate;

(ii) the nonpartisan offices and ballot issues appear on each party's ballot; and

(iii) with respect to ballot issues, written approval is obtained as provided in 13-27-502.

(2) An election administrator does not need to prepare a primary ballot for a political party if:

(a) the party does not have candidates for more than half of the offices to appear on the ballot; or

(b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

(3) If, pursuant to subsection (2), *in a primary election held under 13-1-107(1)* a primary ballot for a political party is not prepared, the secretary of state shall certify that a primary election is unnecessary for that party and shall instruct the election administrator to certify the names of the candidates for that party for the general election ballot only.

(4) The separate ballots for each party must have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot may have a different appearance than the party ballots but must be numbered in the same order as the party ballots.

(5) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may have a different appearance than the other ballots in the election but must be numbered in the same order.

(6) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices."

Section 22. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection ~~(7)~~ *(8)*, a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. *Except for a candidate who files under 13-38-201, a candidate may not file for more than one public office.* The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the

deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense.

(3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be provided to the election administrator or secretary of state:

(a) by facsimile transmission if a facsimile facility is available for receipt;

(b) in person; or

(c) by mail.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) A write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan, or independent designation.

~~(7)~~*(8)* ~~The~~ *Except as provided in 13-38-201(5), the* requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 23. Section 13-10-325, MCA, is amended to read:

"13-10-325. Withdrawal from nomination. (1) (a) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom the candidate's declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought ~~and the reason for withdrawal. The statement must be sworn or affirmed before an officer empowered to administer oaths~~. *Unless filed electronically with the secretary of state, the statement of withdrawal from nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.*

(b) Except as provided in subsection (1)(c), a candidate may not withdraw later than 85 days before a general election or 75 days before a primary election.

(c) A candidate may not withdraw later than 85 days before a general election conducted pursuant to 13-1-104(1)(a) or a primary election conducted pursuant to 13-1-107(1).

(2) Filing fees paid by the candidate may not be refunded."

Section 24. Section 13-10-404, MCA, is amended to read:

"13-10-404. Placement of candidate on primary ballot — methods of qualification. Before an individual intending to qualify as a presidential candidate may qualify for placement on the ballot, the individual shall qualify by one or more of the following methods:

(1) The individual has *submitted a declaration for nomination to the secretary of state pursuant to 13-10-201(2) and has* been nominated on petitions with the verified signatures of at least 500 qualified electors. The secretary of state shall prescribe the form and content of the petition.

(2) The individual has submitted a declaration for nomination to the secretary of state pursuant to 13-10-201, and the secretary of state has determined, by the time that declarations for nomination are to be filed, that the individual is eligible to receive payments pursuant to the federal Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031, et seq."

Section 25. Section 13-10-405, MCA, is amended to read:

"13-10-405. Submission and verification of petition. Petitions of nomination for the presidential preference primary election and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures are gathered at least 1 week before the primary election filing deadline prescribed in 13-10-201(6)(b). A filing fee is not required. The election administrator shall verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state *by the filing deadline prescribed in 13-10-201(6)(b)*."

Section 26. Section 13-12-202, MCA, is amended to read:

"13-12-202. Ballot form and uniformity. (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

(a) the manner in which each type of ballot may be corrected under 13-12-204;

(b) what provisions must be made on the ballot for write-in candidates;

(c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);

(d) how unvoted ballots must be handled;

(e) how the number of individuals voting and the number of ballots cast must be recorded; and

(f) the order and arrangement of voting system ballots.

(2) The names of all candidates to appear on the ballots must be in the same font size and style.

(3) Notwithstanding 13-19-106(1), when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States must appear on the ballot as provided in 13-25-101~~(2)~~*(5)*."

Section 27. Section 13-12-203, MCA, is amended to read:

"13-12-203. Appearance of candidate's name and party designation on ballot. (1) Subject to 13-12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other candidates, in partisan elections, candidates' names must appear under the title of the office sought, with the name of the party in not more than three words appearing opposite *or below* the name.

(2) Subject to 13-12-202, in nonpartisan *general* elections, the candidates' names must appear under the title of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the ~~words~~ *word* ~~"Nominated without party designation"~~ *"Nonpartisan"*."

Section 28. Section 13-12-207, MCA, is amended to read:

"13-12-207. Order of placement. (1) The order on the ballot for state and federal offices must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a ~~heavy black~~ line must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party must be grouped together.

(b) United States senator;

(c) United States representative;

(d) governor and lieutenant governor;

(e) secretary of state;

(f) attorney general;

(g) state auditor;

(h) state superintendent of public instruction;

(i) public service commissioners;

(j) clerk of the supreme court;

(k) chief justice of the supreme court;

(l) justices of the supreme court;

(m) district court judges;

(n) state senators;

(o) members of the *Montana* house of representatives.

(2) The following order of placement must be observed for county offices:

(a) clerk of the district court;

(b) county commissioner;

(c) county clerk and recorder;

(d) sheriff;

(e) coroner;

(f) county attorney;

(g) county superintendent of schools;

(h) county auditor;

(i) public administrator;

(j) county assessor;

(k) county treasurer;

(l) surveyor;

(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term."

Section 29. Section 13-13-111, MCA, is amended to read:

"13-13-111. Provision and use of voting stations. (1) The election administrator shall provide a sufficient number of voting stations to allow voting to proceed with as little delay as possible.

(2) Voting stations must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted.

(3) No more than one individual may occupy a voting station at one time, except when assistance is furnished to an elector as provided by law.

(4) An individual may not occupy a voting station longer than is reasonably necessary to prepare the elector's ballot, after which the election judges may ~~eject~~ *effect the removal of* the elector from the station."

Section 30. Section 13-13-112, MCA, is amended to read:

"13-13-112. Display of instructions for electors. (1) Except as provided in subsection (3), instructions for electors on how to prepare their ballots or use a voting system must be posted in each voting station provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain:

(a) how to obtain ballots for voting;

(b) how to prepare ballots, including how to:

(i) cast a valid vote, including a valid vote for a write-in candidate;

(ii) correct a mistake; and

(iii) ensure the proper disposition of the ballot after the elector is finished voting;

(c) how to obtain a new ballot in place of one spoiled by accident;

(d) how to vote provisionally pursuant to 13-13-601;

(e) the election date and the hours the polls are open; and

(f) instructions for first-time voters who registered by mail.

(3) If the instructions for use of a voting system are printed on the system or are part of a ballot package given to each elector, separate instructions need not be posted in the voting station.

(4) ~~Official~~ *Sample* ballots, clearly marked "sample" across the face, must be posted at each voting station and in conspicuous places around the polling place."

Section 31. Section 13-13-113, MCA, is amended to read:

"13-13-113. Warning notice to be posted. *(1)* Warning notices shall be posted in conspicuous places in the polling place. Each notice shall be headed "WARNING" in large letters and shall state:

"The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations."

Below this statement shall be printed the following sections: 13-35-201; 13-35-202; 13-35-206; 13-35-211; 13-35-214; 13-35-217; and 13-35-218.

(2) The notice may also contain any other information prescribed by the secretary of state."

Section 32. Section 13-13-114, MCA, is amended to read:

"13-13-114. Voter identification and marking precinct register book before elector votes — provisional voting. (1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(b) An elector who provides the information listed in subsection (1)(a) may sign the precinct register and must be provided with a regular ballot to vote.

(c) If the information provided in subsection (1)(a) differs from information in the precinct register but an election judge determines that the information provided is sufficient to verify the voter's identity and eligibility to vote pursuant to 13-2-512, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote.

(d) An election judge shall write "transfer form" or "registration form" beside the name of any elector submitting a form.

(2) If the information presented under subsection (1) is insufficient to verify the elector's identity and eligibility to vote or if the elector's name does not appear in the precinct register *or appears in the register as provisionally registered and this provisional registration status cannot be resolved at the polling place*, the elector may sign the precinct register and cast a provisional ballot as provided in 13-13-601.

(3) If the elector fails or refuses to sign the elector's name or if the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to 13-1-116 is not provided, the elector may cast a provisional ballot as provided in 13-13-601."

Section 33. Section 13-13-116, MCA, is amended to read:

"13-13-116. Paper ballots to be marked — one ballot to elector. (1) Before delivering a paper ballot to an elector, the election judges shall ensure that the ballot is ~~marked~~ *individually stamped* with the words "official ballot" without part of the mark appearing on the stub, if any. ~~The election judges shall also ensure that the ballot is marked with the name of the county, the number of the precinct, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.~~

(2) Each elector must receive from the election judges one of each type of ballot ~~being used at the election~~ *for which the elector is eligible*."

Section 34. Section 13-13-118, MCA, is amended to read:

"13-13-118. Taking ballot to disabled elector. (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. *If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector.* The elector may request assistance in marking the ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating that the elector is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce that the judge has "a ballot offered by ..... (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If an objection is not heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote must be resolved as provided in Title 13, chapter 13, part 3."

Section 35. Section 13-13-119, MCA, is amended to read:

"13-13-119. Aid to disabled elector. (1) When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.

(2) An election judge or an individual chosen by the disabled elector as specified in subsection (5) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking the elector's ballot.

(3) The election judges shall require a declaration of disability by the elector. The declaration must be made under oath, which must be administered by an election judge.

(4) The elector may be assisted by two judges who represent different parties. *If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector.* The judges shall certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(5) Instead of assistance as provided in subsection (4), the elector may request the assistance of any individual the elector designates to the judges to aid the elector in the marking of the elector's ballot. An individual designated to assist the elector shall sign the individual's name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union.

(6) No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of the elector's ballot."

Section 36. Section 13-13-201, MCA, is amended to read:

"13-13-201. Voting by absentee ballot — procedures. (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;

(d) executing the ~~affidavit~~ *affirmation* printed on the return envelope; and

(e) returning the return envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to the election administrator or, pursuant to 13-13-229, to the special absentee election board.

(3) A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address."

Section 37. Section 13-13-211, MCA, is amended to read:

"13-13-211. Time period for application. (1) Except as provided in 13-13-222, 13-21-210, and subsection (2) of this section, an application for an absentee ballot must be made ~~during a period beginning 75 days before the day of election and ending at~~ *before* noon on the day before the election.

(2) A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot as provided in 13-13-212(2)."

Section 38. Section 13-13-212, MCA, is amended to read:

"13-13-212. Application for absentee ballot — special provisions. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail a forwardable address confirmation form in January of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form is for elections to be held between February 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the ~~register~~ *absentee list* may subsequently request to be mailed an absentee ballot for each subsequent election."

Section 39. Section 13-13-214, MCA, is amended to read:

"13-13-214. Mailing absentee ballot to elector — delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(c) of this section, the election administrator shall mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator shall mail the ballots in a manner that conforms to the deadlines established for ballot availability in 13-13-205.

(c) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

~~(a) a form prescribed by the secretary of state that allows the elector to request absentee ballots for each subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);~~

~~(b)~~*(a)* a secrecy envelope, free of any marks that would identify the voter; and

~~(c)~~*(b)* an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and *shall* remove the stubs from the ballots, ~~attaching the stubs to the elector's absentee ballot application~~ *keeping the stubs in numerical order with the application for absentee ballots, if applicable, or in a precinct envelope or container for that purpose*.

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet."

Section 40. Section 13-13-222, MCA, is amended to read:

"13-13-222. Marking ballot before election day. (1) As soon as the official ballots are available pursuant to 13-13-205, the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

~~(3) If the ballot is marked before the election administrator, the election administrator shall deal with it as provided in 13-13-231.~~

~~(4)~~*(3)* The ballot is considered voted at the time it is received ~~by the election administrator~~ *at the election administrator's office*."

Section 41. Section 13-13-225, MCA, is amended to read:

"13-13-225. Special absentee election boards — members — appointment. (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as provided in 13-13-229.

(2) In a partisan election, each special absentee election board must consist of two members, one from each of the two political parties receiving the highest number of votes in the state during the last preceding general election*, if possible*. Board members shall reside in the county in which they serve.

(3) A member of a special absentee election board may not be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county."

Section 42. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) After an absentee ballot is received, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request *or on the elector's voter registration card* with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application *or on the elector's voter registration card*, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application *or on the elector's voter registration card*, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes. *If an unvoted party ballot is not received, the election administrator shall process the voted party ballot as if the unvoted party ballot had been received.*

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form *or on the elector's voter registration card*, the election administrator shall notify the elector, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.

(6) The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.

(7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107.

(8) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box.

(9) The election administrator shall safely and securely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges."

Section 43. Section 13-13-301, MCA, is amended to read:

"13-13-301. Challenges. (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote*, except as provided in 13-2-514*; ~~or~~

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter*; or*

(h) does not meet another requirement provided in the constitution or by law.

(3) When a challenge has been made under this section*, unless the election administrator determines that the challenge is insufficient, then without the need for further information*:

(a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made:

(i) within 5 days of the filing of the challenge if the election is more than 5 days away; or

(ii) on or before election day if the election is less than 5 days away.

(c) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors."

Section 44. Section 13-13-602, MCA, is amended to read:

"13-13-602. Fail-safe and provisional voting by mail. (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer return envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address *or other information necessary to determine the elector's eligibility to vote*.

(2) The elector's ballot must be handled as a provisional ballot under 13-15-107 if:

(a) a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1);

(b) the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility; or

(c) the elector's name does not appear on the precinct register."

Section 45. Section 13-14-115, MCA, is amended to read:

"13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting primary. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated "nonpartisan primary ballots". The ballots must be arranged and prepared as provided in 13-10-209 and be without political designation.

(2) (a) The election administrator of a political subdivision may determine that a *local nonpartisan portion of a* primary election need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a), the administrator shall give notice to the governing body that a primary election will not be held.

(3) The governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held."

Section 46. Section 13-14-117, MCA, is amended to read:

"13-14-117. Placing names on ballots for general election. (1) Except as provided in subsection (2), candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

(2) If, pursuant to 13-14-115(2), a *local nonpartisan portion of a* primary election is not held, then all candidates who filed for an office are nominees for the office."

Section 47. Section 13-14-118, MCA, is amended to read:

"13-14-118. Vacancies among nominees after nomination and before general election. (1) If after the primary election *and before the 85th day before the general election* a candidate is not able to run for the office for any reason, the vacancy must be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than ~~75~~ *85* days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office must be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) must be certified and must appear on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than ~~75~~ *85* days before the general election and a qualified individual is not elected to the office at the general election, the office is vacant and must be filled as provided by law."

Section 48. Section 13-14-212, MCA, is amended to read:

"13-14-212. Form of ballot on retention of certain incumbent judicial officers. (1) If the incumbent is the only candidate for the office of chief justice, supreme court justice, district court judge, or justice of the peace, the *election administrator may not include a nonpartisan designation or write-in space for the office on the general election ballot. The* name of the incumbent must be placed on the official ballot for the general election as follows:

Shall (insert title of officer) (insert name of the incumbent officer) of the (insert title of the court) of the state of Montana be retained in office for another term?

(2) Following the question, provision must be made, subject to rules adopted pursuant to 13-12-202, for a voter to indicate a "yes" or "no" vote."

Section 49. Section 13-15-101, MCA, is amended to read:

"13-15-101. Votes to be publicly counted — return forms. (1) Any official vote count must be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately ~~post~~ *display* one of the return forms at the place of counting and return a copy to the election administrator. Both forms must be signed by all the election judges completing the count."

Section 50. Section 13-15-107, MCA, is amended to read:

"13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification or eligibility information either in person, by facsimile, by electronic means, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to

13-13-114(1)(a), the election administrator shall compare the signature of the elector or the elector's agent designated pursuant to 13-1-116 on the affirmation required under 13-13-601 to the signature on the elector's voter registration card or the agent's designation form.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (5).

(c) If the signatures do not match and the elector or the elector's agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108.

(3) A provisional ballot must be counted if the election administrator verifies the elector's identity or eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's identity or eligibility under the rules, the elector's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was *or was* not counted with the reasons why the ballot was *or was* not counted.

(5) A provisional ballot must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the elector's voter information is:

(a) verified before 5 p.m. on the day after the election; or

(b) postmarked by 5 p.m. on the day after election day and received and verified by 3 p.m. on the sixth day after the election.

(6) Provisional ballots that are not resolved by the end of election day may not be counted until after 3 p.m. on the sixth day after the election."

Section 51. Section 13-15-108, MCA, is amended to read:

"13-15-108. Rejected ballots — handling provided by rule. (1) All rejected absentee ballots, the absentee ballot applications, and all absentee ballot return envelopes must be handled and marked as provided under rules adopted by the secretary of state.

~~(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be handled and marked as provided under rules adopted by the secretary of state.~~

~~(3)~~*(2)* After being handled and marked as provided in this section, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked as provided under rules adopted by the secretary of state. After a package or container is sealed pursuant to this subsection (3), a package or container may not be opened without a court order."

Section 52. Section 13-15-112, MCA, is amended to read:

"13-15-112. Appointment of counting boards. To count votes in any election under this title, when election judges are appointed under 13-4-101,

each county's governing body shall designate *one or more groups of* three of the election judges to act as ~~a~~ counting ~~board~~ *boards*. The governing body may also designate *one or more groups of* three of the election judges to act as ~~an~~ absentee ballot counting ~~board~~ *boards* under 13-15-104."

Section 53. Section 13-15-205, MCA, is amended to read:

"13-15-205. Items to be delivered to election administrator by election judges — disposition of other items. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

(a) the precinct register;

(b) the list of individuals challenged;

(c) the pollbook;

(d) both of the tally sheets.

(2) The election judges shall enclose in a separate ~~package or envelope~~ *container*, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate ~~package or envelope~~ *container*, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This envelope must be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots must be enclosed in a separate ~~package or envelope~~ *container*, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write the judge's name across all seals.

(5) The return form provided for in 13-15-101 must be returned with the items provided for in this section but may not be sealed in any of the ~~packages~~ *containers*.

(6) The ~~envelopes or packages~~ *containers* required by this section must be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies."

Section 54. Section 13-15-206, MCA, is amended to read:

"13-15-206. Counting votes — uniformity — rulemaking — definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is counting votes:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unvoted ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled, the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted if:

(a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(ii) pursuant to 13-10-211~~(7)~~*(8)*, a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office; and

(b) the oval, box, or other designated voting area on the ballot is marked.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue."

Section 55. Section 13-15-402, MCA, is amended to read:

"13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

~~(3) If the returns from an election precinct have not been received by the election administrator within 3 to 7 days after an election, the election administrator shall immediately advise the chief election judge.~~

~~(4)~~*(3)* If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404."

Section 56. Section 13-15-404, MCA, is amended to read:

"13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of the secretary's office a report of the canvass that lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual must be entered in the report ~~in the same place as the votes for other individuals for the same office~~ but must be identified as write-in votes."

Section 57. Section 13-15-506, MCA, is amended to read:

"13-15-506. Report of the canvass. (1) The secretary of the board shall prepare and file in the official records of the secretary of state's office a report of the canvass that lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual must be entered in the report ~~in the same place as votes of other individuals for the same office~~ but must be identified as write-in votes."

Section 58. Section 13-16-201, MCA, is amended to read:

"13-16-201. Conditions under which recount to be conducted. (1) A recount must be conducted if:

(a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a recount will change the result and that a recount of the votes for the office or nomination should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify by certified mail each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) a canvassing board petitions for a recount as provided in 13-15-403.

(2) If the election is a school election, the petition is filed with the filing officer with whom the declarations for nomination for school district office were filed or with whom the school ballot issue was filed.

~~(2)~~*(3)* When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator ~~by~~

~~certified mail~~ of the filing of the petition, and a recount must be conducted in all precincts in each affected county."

Section 59. Section 13-16-412, MCA, is amended to read:

"13-16-412. Procedure for recounting paper ballots. To conduct a recount of paper ballots:

(1) the election administrator shall provide to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all the paper ballots voted in the precinct or precincts;

(2) a member of the recount board shall open each sealed package or envelope and remove the ballots, and the board shall count the votes on each ballot manually in the manner provided in 13-15-206(2)*, except that if the office to be recounted is on a partisan primary election ballot, votes are recounted only on the party ballots that are subject to the recount*; and

(3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct."

Section 60. Section 13-16-419, MCA, is amended to read:

"13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, the secretary of state shall file them, shall fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question as corrected by the certificates and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, further action may not be taken.

(b) If there is a change in the results, *the first certificate is void and* a new certificate of election or nomination must be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated."

Section 61. Section 13-17-203, MCA, is amended to read:

"13-17-203. Publication of information concerning voting systems. (1) Not more than 10 or less than ~~3~~ *2* days before an election at which a voting system will be used, the election administrator shall broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county:

(a) a diagram showing the voting system and *a sample of the* ballot ~~arrangement~~ *layout* (in newspaper only);

(b) a statement of the locations where voting systems are on public exhibition; and

(c) instructions on how to vote.

(2) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors."

Section 62. Section 13-17-503, MCA, is amended to read:

"13-17-503. Random-sample audit of vote-counting machines required — rulemaking authority. (1) After unofficial results are available to the public in a federal election, but before the official canvass by the county

board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

(a) appeared to have at least one overvote;

(b) appeared to be blank;

(c) was in a condition that prevented its processing by a vote-counting machine; or

(d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

(3) Except as provided in subsections (4) and (5), the random-sample audit must include:

(a) at least 5% of the precincts in each county or a minimum of one precinct in each county, whichever is greater; and

(b) an election for:

(i) one statewide office race, if any;

(ii) one federal office race;

(iii) one legislative office race; and

(iv) one statewide ballot issue if a statewide ballot issue was on the ballot.

(4) The audit may not include:

(a) a retention election for a judicial candidate; or

(b) a race in which a candidate was unopposed.

(5) A county is exempt from the postelection random-sample audit requirements if:

(a) the county does not use a vote-counting machine; or

(b) the county's unofficial final vote totals for *a ballot issue or for* any race, ~~or ballot issue~~ *except precinct committee representative,* ~~involving more than one precinct~~ show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.

(6) The secretary of state shall adopt rules to implement the provisions of this part, including but not limited to rules for:

(a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and

(b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in this part."

Section 63. Section 13-19-102, MCA, is amended to read:

"13-19-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Ballot" means the ballot or set of ballots that is to be returned by a specified election day.

(2) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

~~(4) "Return/verification envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:~~

~~(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and~~

~~(b) allow it to be used in the United States mail.~~

~~(5)~~*(4)* "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's ballot and to prevent that elector's ballot from being distinguished from the ballots of other electors.

(5) "Signature envelope" means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail."

Section 64. Section 13-19-106, MCA, is amended to read:

"13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each ~~return/verification~~ *signature* envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a ~~return/verification~~ *signature* envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the ~~return/verification~~ *signature* envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the ~~return/verification~~ *signature* envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box.

(8) Except as provided in 13-19-312, after the close of voting on election day, voted ballots must be counted and canvassed as provided in Title 13, chapter 15."

Section 65. Section 13-19-206, MCA, is amended to read:

"13-19-206. Distributing materials to electors — procedure. For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot for each type of election being held on the specified election day;

(b) a secrecy envelope;

(c) a ~~return/verification~~ *signature* envelope; and

(d) complete written instructions, as approved by the secretary of state pursuant to 13-19-205, for mail ballot voting procedures;

(3) ensure that each packet is:

(a) addressed to a single individual elector at the most current address available from the official registration records; and

(b) deposited in the United States mail with sufficient postage for it to be delivered to the elector's address; and

(4) mail the packet in a manner that conforms to postal regulations to require the return, not forwarding, of undelivered packets."

Section 66. Section 13-19-301, MCA, is amended to read:

"13-19-301. Voting mail ballots. (1) Upon receipt of a mailed ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope in the ~~return/verification~~ *signature* envelope;

(d) executing the ~~affidavit~~ *affirmation* printed on the ~~return/verification~~ *signature* envelope; and

(e) returning the ~~return/verification~~ *signature* envelope with the secrecy envelope containing the ballot, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when the marked ballot is received at a place of deposit."

Section 67. Section 13-19-306, MCA, is amended to read:

"13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or the elector's agent or designee may return the elector's ballot on or before election day by either:

(a) depositing the ~~return/verification~~ *signature* envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) Except as provided in 13-21-206, in order for the ballot to be counted, each elector shall return it in a manner that ensures it is received prior to 8 p.m. on election day."

Section 68. Section 13-19-307, MCA, is amended to read:

"13-19-307. Places of deposit. (1) (a) The election administrator shall designate the election administrator's office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector or the elector's agent or designee.

(b) If the election administrator's office is not accessible pursuant to 13-3-205, the election administrator shall designate at least one accessible place of deposit.

(2) Prior to election day, ballots may be returned to any designated place of deposit during the days and times set by the election administrator and within the regular business hours of the location.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any designated location functions as a place of deposit only on election day.

(5) Each place of deposit must be staffed by at least two election officials who, *except for election judges serving in elections under Title 20, chapter 20,* are selected in the same manner as provided for the selection of election judges in 13-4-102.

(6) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law."

Section 69. Section 13-19-308, MCA, is amended to read:

"13-19-308. Disposition of ballots returned in person. Ballots returned in person by the elector or the elector's agent or designee must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector, agent, or designee is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot as provided in 13-19-314; and

(c) deposit the unopened secrecy envelope containing the voted ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election officials on location shall:

(a) keep a log of the names of all electors for whom the officials receive ballots;

(b) deposit the unopened ~~return/verification~~ *signature* envelope in the sealed ballot transport box provided for that purpose; and

(c) securely retain all voted ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots handled in the same manner provided for ballots returned by mail."

Section 70. Section 13-19-309, MCA, is amended to read:

"13-19-309. Disposition of ballots returned by mail. (1) Upon receipt of each ~~return/verification~~ *signature* envelope, election officials shall:

(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by 13-19-310;

(c) open the ~~return/verification~~ *signature* envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-19-314."

Section 71. Section 13-19-310, MCA, is amended to read:

"13-19-310. Signature verification — procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the ~~return/verification~~ *signature* envelope to the signature on that elector's registration card or agent designation form or on the signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, agent designation form, or signature card, the election administrator shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the ~~return/verification~~ *signature* envelope is the same as the one whose name appears on the registration card, agent designation form, or signature card, the election administrator shall:

(a) designate the ballot as a provisional ballot; and

(b) give notice to the elector as provided in 13-19-313."

Section 72. Section 13-19-311, MCA, is amended to read:

"13-19-311. Valid ballots — requirements. (1) Only valid ballots may be counted in an election conducted under this chapter.

(2) For the purpose of this chapter, a voted ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the ~~return/verification~~ *signature* envelope;

(b) the elector's signature on the affidavit on the ~~return/verification~~ *signature* envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day, except as provided in 13-21-206.

(3) If a voted ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(4) A ballot is invalid if:

(a) any identifying marks are placed on the ballot by the elector; or

(b) more than one ballot is enclosed in a single ~~return/verification~~ *signature* or secrecy envelope unless:

(i) there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or

(ii) (A) the ~~return/verification~~ *signature* envelope contains ballots from the same household;

(B) each ballot is in its own secrecy envelope; and

(C) the ~~return/verification~~ *signature* envelope contains a valid signature for each elector who has returned a ballot."

Section 73. Section 13-19-313, MCA, is amended to read:

"13-19-313. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's ~~return/verification~~ *signature* envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator:

(a) is unable to verify the elector's or agent's signature under 13-19-310;

(b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311; or

(c) finds that the elector has failed to attest to the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address as provided in 13-19-106.

(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

(a) by mail or in person, verify the elector's or agent's signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration card containing the elector's current signature, or by providing a new agent designation form;

(b) by mail, facsimile, telephone, or electronic means, provide the address information required under 13-19-106 or correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at the election administrator's office.

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

(4) (a) If a mail ballot is returned as undeliverable, the election administrator shall investigate the reason for the return and mail a confirmation notice. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice.

(b) If the confirmation notice is returned to the election administrator, the elector must be placed on the inactive list provided for in 13-2-220 until the elector becomes a qualified elector."

Section 74. Section 13-25-101, MCA, is amended to read:

"13-25-101. Nomination of electors — ballot. (1) In the manner and number provided by law, each political party qualified under 13-10-601 shall nominate presidential electors for this state and file with the secretary of state certificates of nomination in a form and by the date prescribed by the secretary of state. ~~However, in~~

(2) In the event of the death of a candidate for president or vice president after a certificate of nomination has been filed, a new candidate for president or vice president, or both, may be nominated for the affected political party and a new certificate of nomination may be filed with the secretary of state by the date prescribed by the secretary of state.

(3) A candidate for election to the office of president or vice president may withdraw from the election by sending a statement of withdrawal to the secretary of state. The statement of withdrawal:

(a) must contain all information necessary to identify the candidate and the office sought; and

(b) unless filed electronically, must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) A candidate may not withdraw later than the deadline prescribed by the secretary of state for nomination of presidential electors.

~~(2)~~*(5)* The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political

parties, which must be placed on the ballot by one of the methods provided in 13-12-204.

(6) If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than 76 days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.

~~(3)~~*(7)* The names of candidates for electors of president and vice president may not appear on the ballot."

Section 75. Section 13-38-201, MCA, is amended to read:

"13-38-201. Election of committee representatives at primary. (1) Except as provided in subsection (4), each political party shall elect at each primary election one person of each sex to serve as committee representatives for each election precinct. The committee representatives must be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committee representative by a written statement, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) Except as provided in subsection (4), the names of candidates for precinct committee representative of each political party must appear on the party ticket in the same manner as other candidates and are voted for in the same manner as other candidates.

(4) If only one person of each sex has been nominated to fill a ~~precinct's~~ *party's precinct* positions, the election administrator may decline to include that ~~precinct's~~ *party's precinct* election in the primary election. If a ~~precinct's~~ *party's precinct* election is not held during the primary election pursuant to this subsection, the county governing body shall declare elected by acclamation the candidates nominated for that ~~precinct's~~ *party's precinct* committee representative positions.

(5) Write-in votes for committee precinct representatives may be counted as specified in 13-15-206(5) only if the individual whose name is written in has filed a declaration of intent as a write-in candidate by the deadline prescribed in 13-10-211(1)."

Section 76. Repealer. The following sections of the Montana Code Annotated are repealed:

13-2-123. Election administrator to provide list of electors to secretary of state.

13-13-231. Disposition of marked ballot upon receipt by election administrator.

13-21-211. Replacement absentee ballots.

Section 77. Effective date. [This act] is effective January 1, 2012.

Approved April 21, 2011

CHAPTER NO. 243

[HB 107]

AN ACT CLARIFYING THE OBLIGATION TO PAY ROYALTIES TO THE STATE UNDER COAL LEASE CONTRACTS; REQUIRING THAT THE

PAYMENT OF ROYALTIES ON A COAL LEASE BE OF THE ESSENCE IN A LEASE CONTRACT; REQUIRING THAT INTEREST BE PAID ON DELINQUENT COAL ROYALTY PAYMENTS; PROVIDING FOR AN AUDIT, AFTER NOTICE, OF COAL ROYALTIES PAID TO THE STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Obligation to pay royalties under coal lease contract — interest. (1) The obligation arising under a coal lease to pay coal royalties to the department, to deliver coal to a purchaser to the credit of the department, or to pay a portion of the proceeds of the sale of the coal to the department is of the essence in the lease contract.

(2) If the operator under a coal lease fails to pay coal royalties to the department within 120 days after the initial coal produced under the lease is marketed and within 90 days for all coal produced and marketed thereafter, the unpaid royalties must bear interest at the legal rate of interest authorized under 31-1-106 from the date due until paid. The operator may remit semiannually to the department the aggregate of 6 months' royalties if the aggregate amount is less than $50 and annually if the aggregate amount is less than $10.

(3) An action for failure to make payments under the lease or seeking payments under this section must be filed in the district court for the county in which the coal mine is located, and that court has jurisdiction over any actions brought under this section. The prevailing party in a proceeding brought under this section is entitled to recover court costs and reasonable attorney fees.

(4) This section does not apply if the department has elected to take the owner's or assignee's proportionate share of production in kind or if there is a dispute as to the title to the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

Section 2. Audit — notice — action to compel payment. (1) Except as provided in subsection (2), the department may, within 5 years of the filing of a report pursuant to 77-3-317, commence an audit of a lessee's or former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.

(2) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalties are due.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 3, part 3, and the provisions of Title 77, chapter 3, part 3, apply to [sections 1 and 2].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 244

[HB 166]

AN ACT GENERALLY REVISING WEED CONTROL LAWS; REQUIRING COUNTY APPROVAL OF WEED MANAGEMENT PLANS; CLARIFYING DUTY OF A PROPERTY OWNER TO INFORM THE OWNER'S AGENT AND THE PURCHASER OF WEED INFESTATIONS AND MANAGEMENT; REVISING FUNDING OPTIONS; AMENDING SECTIONS 7-4-2711, 7-22-2103, 7-22-2109, 7-22-2116, 7-22-2120, 7-22-2121, 7-22-2126, 7-22-2141, 7-22-2142, 7-22-2153, AND 80-7-814, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2711, MCA, is amended to read:

"7-4-2711. County attorney to be legal adviser of county and other subdivisions. (1) The county attorney is the legal adviser of the board of county commissioners. The county attorney shall attend their meetings when required and shall attend and oppose all claims and accounts against the county that are unjust or illegal. The county attorney shall defend all suits brought against the county.

(2) The county attorney shall:

(a) give, when required and without fee, an opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts and fire service areas in unincorporated territories, towns, or villages within the county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee;

(d) when requested by a weed district pursuant to ~~7-22-2103~~ *7-22-2109*, act as counsel, without fee; and

(e) when requested by a county hospital board pursuant to 7-34-2115, act as counsel, without fee, unless the legal action requested involves the county commissioners."

Section 2. Section 7-22-2103, MCA, is amended to read:

"7-22-2103. District weed board — *appointment* — *commissioner powers.* (1) The commissioners shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203.

(2) Upon a recommendation from the weed board, the commissioners may appoint a weed coordinator.

(3) The commissioners shall approve, approve with revisions, or reject a weed management plan submitted pursuant to 7-22-2121.

~~(2) The board may call upon the county attorney for legal advice and services as it may require.~~"

Section 3. Section 7-22-2109, MCA, is amended to read:

"7-22-2109. Powers and duties of board ~~— use of inmates in county jail work program~~. (1) In addition to any powers or duties established in the resolution creating a district weed board, the board may:

(a) ~~employ~~ *supervise* a coordinator and other employees ~~as necessary~~ and provide for their compensation;

(b) purchase chemicals, materials, and equipment and pay other operational costs ~~that it determines~~ necessary for implementing an effective noxious weed management program. The costs must be paid from the noxious weed fund.

(c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the chemicals, materials, or equipment must be paid by the person and collected as provided in this part.

(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state;

~~(e) enter into agreements with the county sheriff for the use of inmate labor for weed management under this part through a county jail work program that is authorized under 7-32-2225 through 7-32-2227;~~

~~(f)~~*(e)* enter into cost-share agreements for noxious weed management;

~~(g)~~*(f)* enter into agreements with commercial applicators, as defined in 80-8-102, for the control of noxious weeds;

(g) request legal advice and services from the county attorney; and

(h) perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed management program;

(b) establish management criteria for noxious weeds on all land within the district; and

(c) make all reasonable efforts to develop and implement a noxious weed management program covering all land within the district owned or administered by a federal agency."

Section 4. Section 7-22-2116, MCA, is amended to read:

"7-22-2116. Unlawful to permit noxious weeds to propagate — notice required in sale. (1) It is unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land, except that any person who adheres to the noxious weed management program of the person's weed management district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.

(2) When property is offered for sale, the ~~person who owns the property~~ *person who owns the property* shall notify ~~the owner's agent and~~ *the owner's agent and* the purchaser of*:*

(a) the existence of noxious ~~weeds~~ *weed infestations* on the property offered for sale*; and*

(b) the existence of a noxious weed management program or a noxious weed management agreement as provided in subsection (1)."

Section 5. Section 7-22-2120, MCA, is amended to read:

"7-22-2120. Funding — reporting requirements — emergency exemption. (1) (a) Before a district ~~is eligible to receive from~~ *applies to* the state *for* ~~any~~ state ~~funding~~ or federal funding, the district shall provide the department with a ~~comprehensive~~ weed management plan, as provided in 7-22-2121*, and with a copy of the resolution creating the board*.

~~(b) Upon receipt of the district's comprehensive weed management plan by the department, the district may apply for and receive state funding.~~

~~(e)~~*(b)* ~~A~~ *After the initial submission of the weed management plan, the* district's ~~comprehensive~~ weed management plan must be updated and submitted to the department every 2 years.

~~(d)~~*(c)* The department may adopt rules and procedures necessary to implement this section. The rules may not impair the ability of the district to meet its responsibilities.

(2) The department may exempt a district from the requirements of subsection (1) if a noxious weed emergency is declared by the governor as provided in 80-7-815."

Section 6. Section 7-22-2121, MCA, is amended to read:

"7-22-2121. Weed management program. (1) The noxious weed management program must be based on a plan approved by the board *and the commissioners*.

(2) The noxious weed management plan must:

(a) specify the goals and priorities of the program;

(b) review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations;

(c) specify pesticide management goals and procedures, including but not limited to water quality protection, public and worker safety, equipment selection and maintenance, and pesticide selection, application, mixing, loading, storage, and disposal; and

(d) estimate the personnel, operations, and equipment costs of the proposed program*;*

(e) develop a compliance plan or strategy; and

(f) incorporate cooperative agreements established pursuant to 7-22-2151.

(3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within ~~the confines of~~ the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial vegetation and wildlife habitat. ~~Where at all~~ *When* possible, ~~methods for such control shall~~ *management must* include cultural, chemical, and biological methods.

(4) The board may establish special management zones within the district. The management criteria in ~~such~~ *those* zones may be more or less stringent than the general management criteria for the district."

Section 7. Section 7-22-2126, MCA, is amended to read:

"7-22-2126. Embargo. (1) The board may establish embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.

(2) The board shall establish a special embargo program for the movement of forage, as defined in 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in 80-7-903.

(3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not ~~move~~ *transport* or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo ~~is found to have met all of~~ *meets* the requirements of the state certification program and the department

verifies compliance with the program, the board shall release the embargo. The ~~board may also release the~~ forage *may also be released if the board* ~~under the following conditions~~:

(a) ~~verification of~~ *verifies the* guaranteed delivery back to the original producer, as defined in 80-7-903;

(b) *approves* burning or disposal of the forage ~~in a manner acceptable to the board~~; or

(c) *approves* other alternatives ~~approved by the board~~.

(4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of Title 80, chapter 7, part 9, to the department within 48 hours.

(5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not accomplished, the board may condemn the forage and implement through its employees ~~any of~~ the conditions ~~set forth~~ in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage."

Section 8. Section 7-22-2141, MCA, is amended to read:

"7-22-2141. Noxious weed fund ~~authorized~~. (1) The commissioners ~~of each county in this state~~ shall create a noxious weed ~~management~~ fund~~, to be designated the "noxious weed fund"~~ *to be used only for purposes authorized by this part*.

(2) ~~This fund shall be kept separate and distinct by the county treasurer~~ *The fund must be maintained by the county treasurer in accordance with 7-6-2111*."

Section 9. Section 7-22-2142, MCA, is amended to read:

"7-22-2142. Sources of money for noxious weed fund. (1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from ~~the general fund of the county~~ *any source in an amount of not less than $100,000 or an amount equivalent to 1.6 mills levied upon the taxable value of all property*; and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county ~~or by contributing an equivalent amount from another source of not less than the amount received from all county sources in fiscal year 2000 or, for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal year 2000 or $100,000~~. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

(5) ~~The~~ *Subject to 15-10-420, the* commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. ~~The~~ *Pursuant to an election held in accordance with 15-10-425, the* amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone."

Section 10. Section 7-22-2153, MCA, is amended to read:

"7-22-2153. ~~Voluntary agreements~~ *Agreements* for control of noxious weeds along roads — liability of landowner who objects to weed district control measures — penalties. (1) ~~Any person may voluntarily seek to enter into an agreement for the management of noxious weeds along a state or county highway or road bordering or running through the person's land. The coordinator may draft a voluntary agreement upon the request of and in cooperation with the person. However, the agreement must, in the board's judgment, provide for effective weed management.~~ *The board may enter into an agreement with a landowner that allows the landowner to manage noxious weeds along a state or county highway or road that borders or bisects the landowner's property.*

(2) The ~~weed management~~ agreement must be signed by the ~~person~~ *landowner* and~~, upon approval of the board, by~~ the *board's* presiding officer. An agreement involving a state highway right-of-way must also be signed by a representative of the department of transportation.

~~(2)~~*(3)* The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the ~~person~~ *landowner or anyone acting on behalf of the landowner* in managing noxious weeds ~~on the state or county highway right-of-way~~ *pursuant to the agreement*. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the ~~person signing the agreement~~ *landowner who signed the agreement*.

(4) If the ~~board later finds that the person~~ *landowner* ~~has failed to adhere to~~ *violates* the agreement, the board shall issue an order informing the ~~person~~ *landowner* that the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the ~~person~~ *landowner* complies with the ~~provisions of the~~ agreement within a specified time period.

~~(3)~~*(5)* (a) If a ~~person~~ *landowner* objects to weed control measures ~~bordering a state or county highway right-of-way~~ *along a state or county highway or road that borders or bisects the landowner's property* and does not enter ~~a voluntary~~ *into an* agreement pursuant to ~~subsections (1) and (2)~~ *this section* and if the board finds that the person has failed to provide alternative weed control, the board shall issue an order informing the ~~person~~ *landowner* that the management of noxious weeds on the right-of-way will be undertaken by the board unless the ~~person~~ *landowner* provides *to the board an acceptable plan of* alternative weed control within 30 days.

(b) A ~~person who does not provide alternative weed control within the time specified in subsection (3)(a) is guilty of~~ *Failing to provide alternative weed control pursuant to subsection (5)(a) is* a misdemeanor. ~~and, upon conviction,~~

Upon conviction, an offender shall be sentenced pursuant to 46-18-212 and assessed the costs of weed control provided by the board. A second or subsequent conviction is punishable by a fine of not less than $500 or more than $2,000, plus the costs of weed control provided by the board."

Section 11. Section 80-7-814, MCA, is amended to read:

"80-7-814. Administration and expenditure of funds. (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches $10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall deposit any reverted funds into the noxious weed management trust fund as principal.

(3) The principal of the noxious weed management trust fund in excess of $10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of $10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program ~~with~~ *using one of the following methods, whichever is less:*

(a) ~~a levy in~~ *levying* an amount *of* not less than 1.6 mills or an equivalent amount from another source*;* or

(b) ~~by~~ *appropriating* an amount of not less than $100,000 ~~for first-class counties, as defined in 7-1-2111~~ *from any source*.

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 12. Coordination instruction. If House Bill No. 212 and [this act] are both passed and approved and if both contain a section that amends 80-7-814, then the sections amending 80-7-814 are void and 80-7-814 must be amended as follows:

"80-7-814. Administration and expenditure of funds. (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches $10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall deposit any reverted funds into the noxious weed management trust fund as principal.

(3) The principal of the noxious weed management trust fund in excess of $10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of $10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded

its own weed management program ~~with~~ *using one of the following methods, whichever is lesser:*

(a) ~~a levy in~~ *levying* an amount not less than 1.6 mills or an equivalent amount from another source*;* or

(b) ~~by~~ *appropriating* an amount of not less than $100,000 ~~for first-class counties, as defined in 7-1-2111~~ *from any source*.

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 13. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 245

[HB 196]

AN ACT ALLOWING THE DEPARTMENT OF COMMERCE TO REVIEW, ANALYZE, AND COMMENT ON BEHALF OF LOCAL GOVERNMENTS REGARDING SIGNIFICANT FEDERAL LAND MANAGEMENT PROPOSALS; PROVIDING FOR RULEMAKING; AND ESTABLISHING ADVOCACY ON BEHALF OF LOCAL GOVERNMENTS AS A FUNCTION OF

THE DEPARTMENT OF COMMERCE REGARDING FEDERAL LAND MANAGEMENT PROPOSALS.

WHEREAS, the Department of Commerce has a responsibility to maintain and advance the socioeconomic health of Montana communities; and

WHEREAS, Montana communities often lack the resources to quickly analyze and comment on federal land management proposals that may impact their communities; and

WHEREAS, the lack of regularity regarding federal land management proposals affecting Montana communities complicates responses by local governments and additionally means there is little need for a separate state program while still a need to respond in a timely manner.

Be it enacted by the Legislature of the State of Montana:

Section 1. Functions of department of commerce — socioeconomic advocacy. The department of commerce may, if funds are available, advocate on behalf of local governments, as defined in 7-11-1002, by reviewing, analyzing, and commenting on prospective impacts on local socioeconomic conditions from federal land management proposals.

Section 2. State assistance to local governments in review of and comment on federal land management proposals — rulemaking. (1) In carrying out the provisions of [section 1], the department of commerce may conduct on behalf of local governments a socioeconomic impact review and analysis of significant federal land management proposals. The department of commerce may use the review and analysis to comment in a timely manner on the federal proposals regarding projected impacts on local government.

(2) The department of commerce may:

(a) establish a minimal procedure for local governments to request from the department a review and analysis of significant federal land management proposals that may have a direct socioeconomic impact on the community for which the local government has requested the review. The request must include sufficient details about the federal land management proposal for the department of commerce to determine a deadline by which the review must be conducted.

(b) contract with a unit of the Montana university system experienced in technical, doctorate-level analysis of the socioeconomic impacts of federal land management proposals to provide an independent economic analysis of the federal proposals;

(c) advocate on behalf of the local government before the agency issuing the federal land management proposals, using the reports generated under this subsection (2); and

(d) report to an appropriate legislative interim committee regarding the number of requests, the types of requests, and the number of responses handled annually. The department shall post the information under this subsection (2)(d) on its website along with a summary of each requested analysis.

(3) The department of commerce may adopt rules to implement this section.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [sections 1 and 2].

Approved April 21, 2011

CHAPTER NO. 246

[HB 216]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ADOPT RULES FOR HARDSHIP LICENSES THAT ALLOW PERMITHOLDERS 14 YEARS OF AGE OR OLDER TO OPERATE A MOTOR VEHICLE TO OR FROM A SCHOOL BUS STOP WITHOUT A PARENT OR LEGAL GUARDIAN; REVISING THE DEPARTMENT'S RULEMAKING AUTHORITY; AND AMENDING SECTION 61-5-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-125, MCA, is amended to read:

"61-5-125. Authority of department — rulemaking authority. (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department shall adopt rules governing the issuance of a hardship license to an underage applicant, including but not limited to an applicant who is 14 years of age or older who holds a valid instruction permit or a traffic education learner license under 61-5-106. The rules must consider whether a hardship license is needed because the applicant's licensed parent or guardian is

not available to accompany the permitholder due to employment or circumstances related to the operation of a farm or ranch and the permitholder is required to drive more than 7 miles from the permitholder's residence to the permitholder's school bus stop.

~~(3)~~*(4)* The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

~~(b) issuance of a hardship license to an underage applicant;~~

~~(c)~~*(b)* the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

~~(d)~~*(c)* circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

~~(e)~~*(d)* restrictions to be imposed upon a probationary license;

~~(f)~~*(e)* renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty;

~~(g)~~*(f)* issuance of a replacement driver's license; and

~~(h)~~*(g)* a determination of the driver's license expiration date, minimum and maximum license terms, and license renewal requirements for a driver's license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law."

Approved April 21, 2011

CHAPTER NO. 247

[HB 277]

AN ACT ALLOWING A LOCAL GOVERNMENT TO AUTHORIZE THE USE OF GOLF CARTS ON PUBLIC STREETS OR HIGHWAYS; DEFINING "GOLF CART"; REQUIRING REGISTRATION OF CERTAIN GOLF CARTS; AMENDING SECTIONS 10-3-1307, 23-1-105, 61-1-101, 61-3-312, 61-3-321, 61-3-332, 61-6-158, AND 61-12-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Operation of golf carts — unlawful operation — exception — required equipment. (1) A person may not operate a golf cart on a public street or highway open to the public unless the operation is specifically authorized by ordinance or regulation passed by the local governing body of the county, city, or town for a public street or highway under its jurisdiction.

(2) A person operating a golf cart under this section must have a valid driver's license.

(3) A golf cart may not be operated on a public street or highway when permitted by this section unless it is equipped with:

(a) at least one and not more than two headlamps;

(b) at least one taillamp;

(c) at least one reflector;

(d) stop lamps;

(e) a horn; and

(f) a mirror that reflects to the driver a view of the highway.

(4) Except as provided in 61-3-321, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

Section 2. Section 10-3-1307, MCA, is amended to read:

"10-3-1307. Responsibilities of department of transportation — assessment and collection of fees — issuance of permits — inspection of motor carriers. (1) After receiving notification from the person or entity that plans to ship high-level radioactive waste or transuranic waste through the state, the department of transportation shall assess fees according to the following schedule:

(a) a fee of $2,500 must be assessed for each cask designed for transport by truck; and

(b) a fee of $4,500 must be assessed for the first cask designed for transport by rail and a fee of $3,000 for each additional cask designed for transport by rail that is shipped by the same person or entity in the same shipment.

(2) Payment of the fees provided in subsection (1) is the responsibility of the person or entity who owns the waste.

(3) Upon receipt of the fees provided in subsection (1), the department of transportation shall issue to the owner of the waste a permit that must be carried with the waste as it is traveling through the state.

(4) The department of transportation shall deposit all of the fees collected under this section in the radioactive waste transportation monitoring, emergency response, and training account created in 10-3-1304.

(5) If the waste is to be transported through the state by motor carrier, the department of transportation shall coordinate with the highway patrol on the inspection of the motor carrier by the motor carrier services division.

(6) This section does not exempt the operator of a motor carrier from any of the provisions of Title 61, chapter 10, from Title 69, chapter 12, or from any other law that applies to the operation of motor vehicles in Montana.

(7) Fees under this section must be assessed regardless of ownership, and 61-3-321~~(13)~~*(14)* and 61-10-127 do not apply."

Section 3. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges. (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321~~(18)(a)~~*(19)(a)* may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department."

Section 4. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(7) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(8) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (8):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(9) "Commission" means the state transportation commission.

(10) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(11) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(12) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(13) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (13)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(14) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(15) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(16) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(17) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(18) "Driver" means a person who drives or is in actual physical control of a vehicle.

(19) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(20) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(21) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(22) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

~~(22)~~*(23)* "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

~~(23)~~*(24)* "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(24)~~*(25)* "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(25)~~*(26)* "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

~~(26)~~*(27)* "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

~~(27)~~*(28)* "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

~~(28)~~*(29)* "Manufactured home" has the meaning provided in 15-24-201.

~~(29)~~*(30)* "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

~~(30)~~*(31)* "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

~~(31)~~*(32)* (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

~~(32)~~*(33)* "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

~~(33)~~*(34)* "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

~~(34)~~*(35)* (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(35)~~*(36)* (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

~~(36)~~*(37)* (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

~~(37)~~*(38)* (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

~~(38)~~*(39)* "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(39)~~*(40)* (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(40)~~*(41)* (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; ~~and~~

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9*;*

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to [section 1].

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a

motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(41)~~*(42)* "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

~~(42)~~*(43)* "Nonresident" means a person who is not a Montana resident.

~~(43)~~*(44)* (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

~~(44)~~*(45)* (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

~~(45)~~*(46)* "Operator" means a person who is in actual physical control of a motor vehicle.

~~(46)~~*(47)* "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

~~(47)~~*(48)* "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

~~(48)~~*(49)* "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(49)~~*(50)* "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

~~(50)~~*(51)* "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(51)~~*(52)* (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

~~(52)~~*(53)* "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

~~(53)~~*(54)* (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

~~(54)~~*(55)* "Recreational vehicle" includes a motor home, travel trailer, or camper.

~~(55)~~*(56)* "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

~~(56)~~*(57)* "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

~~(57)~~*(58)* "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

~~(58)~~*(59)* "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

~~(59)~~*(60)* "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

~~(60)~~*(61)* "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

~~(61)~~*(62)* (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(62)~~*(63)* "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

~~(63)~~*(64)* "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

~~(64)~~*(65)* "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

~~(65)~~*(66)* "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

~~(66)~~*(67)* "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

~~(67)~~*(68)* (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(68)~~*(69)* (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(69)~~*(70)* (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(70)~~*(71)* "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

~~(71)~~*(72)* "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(72)~~*(73)* "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(73)~~*(74)* "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

~~(74)~~*(75)* "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(75)~~*(76)* "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(76)~~*(77)* (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(77)~~*(78)* "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

~~(78)~~*(79)* "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(79)~~*(80)* "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(80)~~*(81)* "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(81)~~*(82)* "Under the influence" has the meaning provided in 61-8-401.

~~(82)~~*(83)* "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(83)~~*(84)* "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

~~(84)~~*(85)* (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(85)~~*(86)* "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

~~(86)~~*(87)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(87)~~*(88)* "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 5. Section 61-3-312, MCA, is amended to read:

"61-3-312. Renewal of registration — exceptions — grace period. (1) Except as provided in 61-3-313 and 61-3-721, the registration of a motor vehicle under this chapter must be renewed on or before the last day of the month of the motor vehicle's registration period following the expiration of the motor vehicle's registration.

(2) Except as provided in subsection (4), a person may renew a motor vehicle's registration by submitting full payment for the fees or taxes required under 61-3-303 and 61-3-321~~(12)~~*(13)* to the department, an authorized agent, or a county treasurer in any county of this state.

(3) The department, an authorized agent, or a county treasurer may use the online motor vehicle liability insurance verification system provided in 61-6-157 to verify proof of compliance with 61-6-301.

(4) Beginning July 1, 2011, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system.

(5) Except as provided in 61-3-315, the registration period originally assigned under 61-3-311 must be retained and the duration of the renewed registration is determined in accordance with 61-3-311. A registration receipt is valid for the registration period for which it is issued.

(6) The owner of a motor vehicle subject to registration renewal under the provisions of this section is considered to have renewed the motor vehicle's registration in a timely manner if the owner submits full payment for the required fees or taxes, as prescribed in the mail renewal notice from the department, to the department, an authorized agent, or a county treasurer on or before the last day of the month of the motor vehicle's registration period and if, beginning July 1, 2011, the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in 61-6-157.

(7) The department, an authorized agent, or a county treasurer may not renew the registration of a motor vehicle for which ownership has been transferred and that was originally registered without being titled under the provisions of 61-3-303(3)(b) unless:

(a) the previously issued certificate of title has been surrendered to the department, an authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the motor vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208."

Section 6. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through ~~(19)~~ *(20)*:

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(a) if the vehicle is 4 or less years old, $217;

(b) if the vehicle is 5 through 10 years old, $87; and

(c) if the vehicle is 11 or more years old, $28.

(3) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

(a) if the declared weight is less than 6,000 pounds, $61.25; or

(b) if the declared weight is 6,000 pounds or more, $148.25.

(4) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is $61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

(i) a one-time registration fee of $237.50;

(ii) unless a new set of license plates is being issued, an insurance verification fee of $5, which must be deposited in the account established under 61-6-158; and

(iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, $72; and

(b) 16 feet in length or longer, $152.

(10) Except as provided in subsection ~~(14)~~ *(15)*, the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(11) (a) Except as provided in subsections (11)(b) and ~~(14)~~ *(15)*, the one-time registration fee for a snowmobile is $60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of $40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of $20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) The one-time registration fee for golf carts authorized to operate on certain public streets and highways pursuant to [section 1] is $25. Upon receipt of the fee, the department shall issue the owner a decal, which must be displayed visibly on the golf cart.

~~(12)~~*(13)* (a) Except as provided in subsection ~~(12)(b)~~ *(13)(b)*, a fee of $10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The $10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of $15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection ~~(12)~~ *(13)* must be deposited in the account established under 61-6-158, except that $2 of the fee imposed in subsection ~~(12)(a)~~ *(13)(a)* must be deposited in the state general fund.

~~(13)~~*(14)* The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520.

~~(14)~~*(15)* Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

~~(15)~~*(16)* A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

~~(16)~~*(17)* Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

~~(17)~~*(18)* The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

~~(18)~~*(19)* (a) Unless a person exercises the option in subsection ~~(18)(b)~~ *(19)(b)*, an additional fee of $4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department of fish, wildlife, and parks shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection ~~(18)(a)~~ *(19)(a)*. If a written election is made, the fee may not be collected.

~~(19)~~*(20)* For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

~~(20)~~*(21)* This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 7. Section 61-3-332, MCA, is amended to read:

"61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(b), and (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not reissued for a vehicle, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(c) For a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer that is permanently registered as provided in 61-3-313(2), the department may use the word or an abbreviation for the word "permanent" on the plate in lieu of issuing a registration decal for the plate.

(3) (a) (i) Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates. For the purposes of this subsection (3), all military, veteran, and amateur radio license plates and any license plate with a wheelchair design, excluding collegiate or generic specialty plates with a wheelchair design, are treated as standard license plates.

(ii) License plates issued on or after January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate if, upon renewal of registration under 61-3-332, the license plates are 5 or more years old or will become older than 5 years during the registration period.

(iii) License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate in accordance with the implementation schedule adopted by the department under 61-3-315. Until

January 1, 2015, and upon payment of the fee required in ~~61-3-321(12)(b)~~ *61-3-321(13)(b)*, a vehicle owner may elect to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under this subsection.

(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311, may display the license plate and plate design in effect at the time of registration for the entire registration period.

(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(d) The provisions of this subsection (3) do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

(e) The requirements of this subsection (3) apply to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, commemorative centennial license plates authorized under 61-3-448, and special military or veteran license plates authorized under 61-3-458.

(4) For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are

used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a design that distinguishes each separate plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 8. Section 61-6-158, MCA, is amended to read:

"61-6-158. Vehicle insurance verification and license plate operating account. (1) There is a vehicle insurance verification and license plate operating account in the state special revenue fund type as provided in 17-2-102.

(2) Fees imposed under 61-3-321(7)(b)(ii) and ~~(12)~~ *(13)*, 61-3-333, 61-3-465(1)(b)(i), 61-3-480(2)(c)(i), or 61-3-562(1)(a)(ii) or established and collected under 61-6-105 must be deposited in the account.

(3) The money in the vehicle insurance verification and license plate operating account must be used by the department to pay costs incurred in or associated with the operation, maintenance, and enhancement of the system established under 61-6-157 and the contract required in 61-3-338 for the manufacture and distribution of license plates by Montana correctional enterprises."

Section 9. Section 61-12-101, MCA, is amended to read:

"61-12-101. Powers of local authorities to regulate traffic. The provisions of chapters 8 and 9 do not prevent local authorities with respect to sidewalks, streets, and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) regulating the standing or parking of vehicles;

(2) regulating the traffic by means of police officers or traffic control devices;

(3) regulating or prohibiting processions or assemblages on the highways;

(4) designating particular highways as one-way highways and requiring that all vehicles on those highways be moved in one specific direction;

(5) regulating the speed of vehicles in public parks;

(6) designating any highway as a through highway, as defined in 61-8-341, and requiring that all vehicles stop before entering or crossing a through highway and designating any intersection, as defined in 61-8-102, as a stop intersection and requiring all vehicles to stop at one or more entrances to stop intersections;

(7) restricting the use of highways as authorized in 61-10-128(2);

(8) regulating the operation of bicycles, as defined in 61-8-102, and requiring the registration and licensing of bicycles, including requiring a registration fee;

(9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10) altering the speed limits as authorized in Title 7, chapter 14, and Title 61, chapter 8;

(11) regulating the operating of a vehicle by a person who is a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree that renders the person incapable of safely operating a vehicle within the incorporated limits of any city or town;

(12) regulating or prohibiting a person who is under the influence of intoxicating liquor from operating or being in actual physical control of a vehicle within the incorporated limits of a city or town;

(13) regulating or prohibiting the operation of a vehicle by a person in willful or wanton disregard for the safety of persons or property within the incorporated limits of a city or town;

(14) enacting as ordinances any provisions of chapter 8 or 9 and any other law regulating traffic, pedestrians, vehicles, and operators of vehicles that are not in conflict with state law or federal regulations and enforcing the ordinances; ~~and~~

(15) regulating the operation of motorized nonstandard vehicles~~, as defined in 61-1-101,~~ on sidewalks, streets, and highways*; and*

(16) regulating the operation of golf carts on streets and highways."

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 1].

Section 11. Coordination instruction. If both House Bill No. 213 and [this act] are passed and approved, then the section of [this act] amending 61-1-101 is void and the definition of "motor vehicle" in 61-1-101 must be amended as follows:

"(40) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; ~~and~~

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9*; and*

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to [section 1 of this act] or by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person."

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 22, 2011

CHAPTER NO. 248

[HB 291]

AN ACT PROVIDING A REFUND TO CERTAIN CUSTOMERS WHO PAY FOR THE EXTENSION OF A UTILITY LINE TO A RESIDENTIAL STRUCTURE IF ADDITIONAL CUSTOMERS CONNECT TO THE EXTENSION; REQUIRING EACH ADDITIONAL CUSTOMER TO ADVANCE TO THE ELECTRIC UTILITY AN EQUAL PROPORTIONATE SHARE OF THE TOTAL AMOUNT PAID FOR THE EXTENSION; REQUIRING A REFUND OF THE ADVANCE ON A PRO RATA BASIS; PROHIBITING A SMALL CUSTOMER FROM RECEIVING A REFUND GREATER THAN THE CUSTOMER'S PROPORTIONATE SHARE OF THE COSTS; LIMITING THE REFUND TO A CERTAIN PERIOD OF TIME; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [section 2] and this section, the following definitions apply:

(1) "Electric utility" means a public utility regulated by the public service commission pursuant to Title 69, chapter 3, that provides electrical service for heat, light, or power to a small customer.

(2) "Extension" means any works or improvements necessary to connect a residential structure of a small customer to an electric utility's distribution or transmission system.

(3) "Residential structure" means a single-family house, trailer, manufactured home, or mobile home, excluding any outbuildings, improvements, irrigation pumps, facilities, or other structures located on the property.

(4) "Small customer" has the meaning provided in 69-3-2003.

Section 2. Residential utility line extension — refund. (1) A small customer of an electric utility who pays for a portion of the construction of an extension to a residential structure or who advances money to the electric utility for a subsequent connection to that extension must receive a refund as provided in subsection (2) if an additional customer connects to the extension.

(2) Each additional customer, prior to the initiation of electric service, shall advance to the electric utility an equal proportionate share of the total amount paid for the extension. The electric utility shall refund the advance on a pro rata basis to the small customer who paid for the initial extension or to the small customer who paid for a subsequent connection to that extension. A refund may not be issued after 10 years from the date the initial extension is established.

(3) A small customer who expends funds for an extension may not receive a refund that is greater than the amount necessary to return the small customer to the small customer's proportionate share of the cost of the original extension.

(4) A small customer may receive a refund pursuant to this section only if:

(a) the small customer paid for the initial extension or subsequent connection to the extension pursuant to subsection (1); and

(b) at the time the refund is issued, the small customer owns the residential structure to which the extension or subsequent connection to the extension was made.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 69, chapter 5, and the provisions of Title 69, chapter 5, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to extensions occurring on or after [the effective date of this act].

Approved April 21, 2011

CHAPTER NO. 249

[HB 295]

AN ACT GENERALLY REVISING WIND EASEMENTS AND WIND ENERGY RIGHTS; DEFINING WIND ENERGY RIGHTS AS PROPERTY RIGHTS; PROVIDING WIND ENERGY RIGHTS ARE APPURTENANT TO THE SURFACE ESTATE; PROVIDING FOR WIND EASEMENTS; PROVIDING FOR WIND OPTION AGREEMENTS AND WIND ENERGY AGREEMENTS

AND THEIR MINIMUM REQUIREMENTS; AFFIRMING THE DOMINANCE OF A MINERAL ESTATE; AMENDING SECTION 70-17-203, MCA; REPEALING SECTION 70-17-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the "Wind Energy Rights Act".

Section 2. Definitions. As used in [sections 1 through 8], the following definitions apply:

(1) "Wind easement" means the right granted by the owner of real property to a wind energy developer guaranteeing the developer the right to use the real property legally described in a wind energy agreement and the wind resource located on and flowing over its surface to develop a wind energy project. A wind easement is an interest in real property.

(2) "Wind energy agreement" means any wind energy lease, license, or any other written document entered into between the owner of the real property and the wind energy developer that contains the wind easement.

(3) "Wind energy developer" means the person that enters into a wind option agreement or wind energy agreement with the owner of the real property for the purpose of developing a wind energy project.

(4) "Wind energy right" means an interest in real property on and over which the wind resource is located and flows that is appurtenant to the real property.

(5) "Wind option agreement" means a written agreement in which the owner of real property grants a wind energy developer an exclusive right to obtain a wind easement through a wind energy agreement.

Section 3. Wind easement creation — terms. (1) A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property.

(2) The wind easement runs with the real property on and over which the wind resource flows.

(3) A wind easement terminates under the terms and conditions outlined in the wind easement.

Section 4. Severance of wind energy rights limited. (1) A wind energy right in the wind resource located on and flowing over the real property, including without limitation a royalty, if applicable, associated with the production of wind energy may not be severed from the real property even though a wind easement may be created pursuant to [sections 1 through 8].

(2) Nothing in this section may be construed to prohibit or limit the right of a seller of the real property to retain any payments associated with an existing wind option agreement or wind energy agreement.

Section 5. Wind option agreements — contents and requirements — notarization. (1) A wind option agreement executed after [the effective date of this act] must contain but is not limited to:

(a) the names and addresses of the parties to the wind option agreement;

(b) a legal description of the real property subject to the wind option agreement;

(c) the specified term beyond which the wind option agreement terminates and the real property is released from the obligations outlined in the wind option agreement;

(d) compensation for the owner of the real property on and over which the wind resource flows; and

(e) other terms and conditions agreed upon by the owner of the real property and the wind energy developer.

(2) A wind option agreement must be notarized.

(3) A wind option agreement may not exceed 20 years unless extended by agreement of the parties.

Section 6. Wind energy agreement — contents and requirements — notarization. (1) A wind energy agreement executed after [the effective date of this act] must contain but is not limited to:

(a) the names and addresses of the parties to the wind energy agreement;

(b) a legal description of the real property subject to the wind easement and contained in the wind energy agreement;

(c) the obligations of the owner of the real property to ensure the undisturbed flow of wind on and over the real property, including restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the wind flow on and over the real property. Structures do not include equipment necessary to access minerals as they relate to the rights belonging to or the dominance of the mineral estate pursuant to [section 8].

(d) a specified term including the date on which the wind energy agreement or wind easement terminates;

(e) provisions to compensate the owner of the real property for the wind easement;

(f) provisions ensuring that the owner of the real property is not liable for any property tax associated with the wind energy project or other equipment related to the development of the wind energy project during the term of the wind energy agreement;

(g) provisions addressing property owner and wind energy developer liability during the construction and operation of the wind energy project and equipment;

(h) provisions obligating the wind energy developer to comply with federal, state, and local laws and regulations; and

(i) conditions upon which the wind energy agreement may be terminated prior to its termination date.

(2) A wind energy agreement must be notarized.

(3) If the terms of the wind energy agreement do not contain the requirements listed in subsection (1), a court may void the wind energy agreement or order any relief allowed by law.

Section 7. Wind energy agreements — grandfather clause. [Sections 1 through 8] may not be construed to alter, amend, diminish, or invalidate wind energy rights acquired by contract, agreement, or lease prior to [the effective date of this act].

Section 8. Preservation of property rights. [Sections 1 through 8] may not be construed to:

(1) change or alter common law in accordance with 1-1-108 as it relates to the rights belonging to or the dominance of the mineral estate; or

(2) change or alter common law or statutory provisions regarding the ownership of surface or subsurface rights.

(3) Notwithstanding the provisions of [sections 1 through 8] or a wind energy agreement, the real property owner retains the right to grant easements or rights-of-way for all electric power lines to be located on the property.

Section 9. Section 70-17-203, MCA, is amended to read:

"70-17-203. Covenants that run with land. (1) Except as provided in 70-1-522, every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; ~~and~~

(b) conservation easements pursuant to 76-6-209*; and*

(c) wind easements pursuant to [sections 1 through 8].

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 10. Repealer. The following section of the Montana Code Annotated is repealed:

70-17-303. Wind energy easement.

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 12. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 70, chapter 17, and the provisions of Title 70, chapter 17, apply to [sections 1 through 8].

Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 250

[HB 336]

AN ACT REVISING PENALTIES FOR THE WASTE OF GAME ANIMALS, GAME FISH, GAME BIRDS, AND FUR-BEARING ANIMALS; REQUIRING FORFEITURE OF PRIVILEGES AND PAYMENT OF RESTITUTION; AND AMENDING SECTIONS 87-1-111, 87-1-115, 87-3-102, AND 87-3-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-111, MCA, is amended to read:

"87-1-111. Restitution for illegal killing*,* ~~or~~ possession*, or waste* of certain wildlife. (1) Except as provided in 87-1-115 and in addition to other

penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal taking, killing, ~~or~~ possession*, or waste* of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

(a) ~~bighorn~~ *mountain* sheep and endangered species, $2,000;

(b) elk, caribou, bald eagle, black bear, wolf, and moose, $1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, $300;

(e) fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section."

Section 2. Section 87-1-115, MCA, is amended to read:

"87-1-115. Restitution for illegal killing*,* ~~or~~ possession*, or waste* of trophy wildlife. In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the purposeful or knowing illegal killing, taking, ~~or~~ possession*, or waste* of a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

(1) ~~bighorn~~ *mountain* sheep with at least one horn equal to or greater than three-fourth curl as defined by commission regulation, $30,000;

(2) elk with at least six points on one antler, as defined by commission regulation, or any grizzly bear, $8,000;

(3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, $6,000;

(4) antlered deer with at least four points on one antler as defined by commission regulation, $8,000;

(5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, $2,000."

Section 3. Section 87-3-102, MCA, is amended to read:

"87-3-102. Waste of fish*, birds,* or game. (1) A person who is responsible for the death of a mountain lion ~~or wolf~~, except as provided in 87-3-130, commits the offense of waste of game if the person abandons the head or hide in the field.

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

(3) A person responsible for the death of any game animal, except a mountain lion ~~or wolf~~, commits the offense of waste of game if the person purposely or knowingly:

(a) detaches or removes from the carcass only the head, hide, antlers, tusks, or teeth or any or all of these parts;

(b) wastes any part of any game animal, game bird, or game fish suitable for food by transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandons in the field the carcass of any game animal or any portion of the carcass suitable for food.

(4) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food commits the offense of waste of game if the person purposely or knowingly:

(a) transports, stores, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) For the purposes of this section, the meat of a grizzly bear or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of ~~waste of game~~ *a violation of this section* may be fined not less than $50 or more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, ~~may be subject to forfeiture of~~ *shall:*

(a) forfeit any current hunting, fishing, ~~and~~ *or* trapping ~~licenses~~ *license* issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture~~,~~ unless the court imposes a longer ~~forfeiture~~ period. ~~If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap, the~~ *The* department shall notify the person of the forfeiture and loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days of notification.

(b) pay restitution pursuant to 87-1-111 or 87-1-115."

Section 4. Section 87-3-506, MCA, is amended to read:

"87-3-506. Wasting of fur-bearing animals. (1) A person commits the offense of wasting a fur-bearing animal if that person purposely or knowingly:

(a) fails to pick up traps or snares at the end of the trapping season so that the pelt of a fur-bearing animal is wasted;

(b) attends traps or snares so that fur-bearing animals are wasted; or

(c) wastes the pelt of any fur-bearing animal.

(2) The department shall enforce the provisions of this section.

(3) (a) Federal, state, and county predator control programs are exempt from this section.

(b) Pelts of muskrat and beaver killed pursuant to 87-3-501(2) are exempt from this section.

(4) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall:

(a) forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period. The department shall notify the person of the forfeiture and loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days of notification.

(b) pay restitution pursuant to 87-1-111.

~~(4)~~*(5)* As used in this section, "pelt" means the pelt, skin, or fur of a fur-bearing animal."

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 21, 2011

CHAPTER NO. 251

[HB 411]

AN ACT ALLOWING THE DEPARTMENT OF ADMINISTRATION TO AUTHORIZE THE ACTUAL COST OF MEALS FOR CERTAIN FIREFIGHTERS IF THE COSTS EXCEED THE PRESCRIBED MAXIMUM STANDARD RATE PER MEAL; AMENDING SECTION 2-18-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-501, MCA, is amended to read:

"2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, not exceeding $35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus $5 for the morning meal, $6 for the midday meal, and $12 for the evening meal *except as provided in subsection (10).* All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) ~~The~~ *Except as provided in subsection (10), the* department *of administration* shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of the following:

(a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and

(b) lodging when the actual cost exceeds the maximum established in subsection (1), (2)(a), or (4)(a).

(4) Except as provided in subsection (3), for travel to a foreign country, the following provisions apply:

(a) All elected state officials, all appointed members of boards, commissions, and councils, all department directors, and all other state employees must be reimbursed as follows:

(i) $7 for the morning meal, $11 for the midday meal, and $18 for the evening meal; and

(ii) $155 per night for lodging.

(b) All claims for meal and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of $12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available.

(10) When the actual cost of meals exceeds the maximum standard allowed pursuant to subsection (1), the department of administration may authorize the actual cost of meals for firefighters.

(11) For the purposes of implementing subsection (10), the following definitions apply:

(a) "Firefighter" means a firefighter who is employed by the department of natural resources and conservation and who is directly involved in the suppression of a wildfire in Montana.

(b) "Wildfire" means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 252

[HB 522]

AN ACT GENERALLY REVISING LAWS REGARDING THE LOCAL REGULATION OF SUBDIVISIONS; AUTHORIZING A GOVERNING BODY TO EXTEND THE APPROVAL OF A SUBDIVISION APPLICATION AND

PRELIMINARY PLAT FOR A MUTUALLY AGREED-UPON PERIOD OF TIME; REQUIRING THE AGREEMENT FOR THE EXTENSION TO BE IN WRITING; PROVIDING THAT A GOVERNING BODY MAY ISSUE MORE THAN ONE EXTENSION; AND AMENDING SECTION 76-3-610.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for *a mutually agreed-upon period of time* ~~no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507~~. *Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.*

(2) Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 2. Applicability. [This act] applies to subdivision applications and preliminary plats approved prior to [the effective date of this act] and to those approved on or after [the effective date of this act].

Approved April 21, 2011

CHAPTER NO. 253

[HB 538]

AN ACT ALLOWING LOCAL GOVERNMENT BONDS TO BE SOLD AT PUBLIC OR PRIVATE SALE; ESTABLISHING A MINIMUM SALE PRICE; AMENDING SECTIONS 7-7-2212, 7-7-2238, 7-7-2251, 7-7-2252, 7-7-2254, 7-7-4211, 7-7-4236, 7-7-4251, 7-7-4252, 7-7-4254, 7-7-4433, 7-7-4434, 7-10-220, 7-10-221, 7-12-2172, 7-12-4204, 7-14-4652, 7-15-4507, 7-31-113, 20-9-429, 20-9-430, 20-9-431, 20-9-432, 85-7-1436, 85-7-1437, 85-7-2022, 85-7-2023, 85-7-2033, 85-8-503, AND 85-9-625, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Public or private sale — procedure for public sale. (1) The governing body of a political subdivision may sell its bonds at public or private sale as determined by the governing body, and if the bonds are sold at private sale, in denominations and forms approved by the governing body. If the governing body conducts a public sale, those provisions of state law regarding the public sale of bonds that pertain to the political subdivision govern the sale.

(2) The bonds must be sold at not less than 97% of the principal amount of the bonds if the governing body determines that a sale at that price is in the best interests of the political subdivision.

Section 2. Section 7-7-2212, MCA, is amended to read:

"7-7-2212. Citizen bonds authorized. (1) A county authorized to sell general obligation bonds under this chapter may issue and sell a portion of the bonds in denominations of less than $5,000~~, either by~~ *by:*

(a) competitive public sale*,* ~~or~~ directly to members of the public, at preestablished interest rates*; or*

(b) private sale pursuant to [section 1].

(2) Bonds issued under 7-7-2212 through 7-7-2215 may be known as "citizen bonds".

(3) Citizen bonds may be issued for any purpose for which a county may issue general obligation bonds.

(4) An officer, employee, contracted financial consultant, or contracted adviser employed or retained by a county selling citizen bonds may not purchase those bonds."

Section 3. Section 7-7-2238, MCA, is amended to read:

"7-7-2238. Resolution to sell bonds *pursuant to public sale.* (1) If a sufficient percentage of the qualified electors entitled to vote at an election voted on the question and a sufficient percentage of votes were cast in favor of issuing bonds as provided in 7-7-2237 *and if the board of county commissioners conducts a public sale*, the board of county commissioners shall adopt a resolution calling for the sale of the bonds.

(2) The resolution calling for the sale of the bonds must state:

(a) the purpose for which the bonds are to be issued;

(b) the amount of the bonds to be issued;

(c) the minimum purchase price of the bonds;

(d) the date that the bonds will bear;

(e) the period of time through which the bonds are payable;

(f) the optional redemption provisions, if any; and

(g) a form of notice of the sale of the bonds.

(3) The resolution must, except in a bond issue of citizen bonds, fix the denomination of serial bonds in case it is found advantageous to issue bonds in that form. The board may in its discretion provide that the bonds may be issued and sold in two or more series or installments.

(4) The board of county commissioners may fix the minimum price for the bonds in an amount less than the principal amount of the bonds, which may not be less than 97% of the principal amount, if the board determines that a sale at that price is in the best interests of the county."

Section 4. Section 7-7-2251, MCA, is amended to read:

"7-7-2251. Form of notice of sale of bonds. (1) ~~The~~ *If a county conducts a public sale, the* notice of sale must state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and must be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of.... County, state of Montana, that the board will on the.... day of...., ..., at the hour of.... ....m., at the office of the board in the courthouse in the (town or city) of.... in the said county, sell to the highest and best bidder for cash general obligation bonds of the county in the principal amount of.... dollars ($....) for the purpose of.....

The bonds will be issued and sold in the aggregate principal amount of.... dollars ($....) and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the board of county commissioners). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of...., ..., will pay interest commencing on the.... day of.... (month), ..., will be payable semiannually on the.... day of.... (month) and.... (month) in each year thereafter, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than $...., with accrued interest on the principal amount of the bonds to date of delivery, and all bidders shall state the lowest rate or rates of interest at which they will purchase the bonds at the purchase price specified for the bonds. (An interest rate may not exceed ....% a year.) The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of.... dollars ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that the bidder fails or refuses to complete the purchase of the bonds in accordance with the terms of the bid.

All bids must be addressed to the board of county commissioners and delivered to the county clerk.

ATTEST: .....

(Presiding officer, Board of County Commissioners)

of..... County, Montana .....

.....

(Clerk of the Board of County Commissioners)

of..... County, Montana

Address....., Montana

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-2212 through 7-7-2215."

Section 5. Section 7-7-2252, MCA, is amended to read:

"7-7-2252. Publication of notice of sale of bonds. ~~The~~ *If a county conducts a public sale, the* board of county commissioners shall publish notice of the bond sale in the official newspaper of the county as provided in 17-5-106. The board may in its discretion publish the notice or a summary of the notice in any financial newspapers published in the city of New York or Chicago."

Section 6. Section 7-7-2254, MCA, is amended to read:

"7-7-2254. Procedure for sale of bonds. (1) ~~The~~ *Any bonds issued under the authority of this part may be sold at public or private sale as determined by the board of county commissioners pursuant to [section 1]. If the* board of county commissioners *conducts a public sale, it* shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds may not be sold at less than the minimum bid specified for their sale with accrued interest to date of delivery, and each bidder shall specify the rate of interest and the purchase price at which the bidder will purchase the bonds. The board shall accept the bid that it judges most advantageous to the

county. The board may reject any bids and sell the bonds at private sale if the board considers it in the best interests of the county.

(3) Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, preparation of the bonds, or negotiating the sale of the bonds."

Section 7. Section 7-7-4211, MCA, is amended to read:

"7-7-4211. Citizen bonds authorized. (1) A city or town authorized to sell general obligation bonds under this chapter may issue and sell any portion of the bond in denominations of less than $5,000~~, either~~ by*:*

(a) competitive public sale*,* ~~or~~ directly to members of the public, at preestablished interest rates*; or*

(b) private sale.

(2) Citizen bonds may be issued for any purpose for which a city or town may issue general obligation bonds.

(3) Bonds issued under 7-7-4211 through 7-7-4213 may be known as "citizen bonds".

(4) An officer, employee, contracted financial consultant, or contracted advisor employed or retained by a city or town selling citizen bonds may not purchase those bonds."

Section 8. Section 7-7-4236, MCA, is amended to read:

"7-7-4236. Resolution to sell bonds *pursuant to public sale.* (1) If issuing of bonds has been approved as provided in 7-7-4235 *and the city or town council conducts a public sale*, the city or town council shall pass a resolution calling for the sale of the bonds.

(2) The resolution calling for the sale of the bonds must state:

(a) the purpose for which the bonds are to be issued;

(b) the amount of the bonds to be issued;

(c) the minimum purchase price of the bonds;

(d) the date that the bonds will bear;

(e) the period of time through which the bonds are payable;

(f) the optional redemption provisions, if any;

(g) that a bond may be redeemed in full, at the option of the city or town, on any interest payment date after expiration of one-half of the term for which the bond was issued; and

(h) a form of notice of the sale of the bonds.

(3) The resolution must, except in a bond issue of citizen bonds, fix the denomination of serial bonds in case it is found advantageous to issue bonds in that form. The council may in its discretion provide that the bonds may be issued and sold in two or more series or installments.

(4) The city or town council may fix the minimum price for the bonds in an amount not less than 97% of the face value if the city or town council determines that the sale is in the best interests of the city or town."

Section 9. Section 7-7-4251, MCA, is amended to read:

"7-7-4251. Form of notice of sale of bonds. (1) ~~The~~ *If a city or town conducts a public sale, the* notice of sale must state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and must be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of...., Montana, that the council will, on the.... day of....,...., at the hour of.....m., at its council chamber in the (city or town) of...., Montana, sell to the highest and best bidder for cash general obligation bonds of the (city or town) in the total amount of.... dollars, ($....) for the purpose of.....

The bonds will be issued and sold in the aggregate principal amount of.... dollars ($....) each and will become due and payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the city or town council).

The bonds must bear an original issue date of....,...., must pay interest commencing on the.... day of.... (month),.., and are payable semiannually on the.... day of.... and on the.... day of.... in each year thereafter and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

The bonds will be sold for not less than $...., with accrued interest on the principal amount of the bonds to date of delivery, and all bidders shall state the lowest rate or rates of interest at which they will purchase the bonds at the purchase price specified for the bonds. (An interest rate may not exceed....% a year.) The council reserves the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-203) in the sum of.... dollars ($....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event that the bidder fails or refuses to complete the purchase of the bonds in accordance with the terms of the bid.

All bids must be addressed to the council of the (city or town) of.... and delivered to the clerk of the (city or town).

.....
Mayor of the (city or town) of
....., Montana

ATTEST:

.....
(City or Town) Clerk

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-4211 through 7-7-4213."

Section 10. Section 7-7-4252, MCA, is amended to read:

"7-7-4252. Publication of notice of sale. ~~The~~ *If a city or town conducts a public sale, the* city or town council or commission shall cause ~~such~~ *a* notice to be published as provided in 17-5-106 in a newspaper of general circulation printed and published in ~~said~~ *the* city or town if there ~~be one~~ *is a newspaper of general circulation* and, if not, then in a newspaper of general circulation printed and published in the county in which ~~said~~ *the* city or town is located. The council or commission may in its discretion cause ~~such~~ *the* notice to be published in ~~such other~~ *another* newspaper or newspapers published either within or ~~without~~ *outside of* the state ~~as~~ *that* in the opinion of the council or commission will be most likely to give notice of ~~such~~ *the* sale to prospective bidders."

Section 11. Section 7-7-4254, MCA, is amended to read:

"7-7-4254. Procedure for sale of bonds. (1) ~~The~~ *Any bonds issued under the authority of this part may be sold at public or private sale, as determined by the city or town council or commission pursuant to [section 1]. If the* city or town

council *or commission conducts a public sale, it* shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds may not be sold at less than the minimum bid specified for their sale with accrued interest to date of delivery, and each bidder shall specify the rate of interest and the purchase price at which the bidder will purchase the bonds. The council shall accept the bid that it judges most advantageous to the city or town. The council may reject any bids and sell the bonds at private sale if the council considers it in the best interests of the city or town.

(3) Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale of the bonds."

Section 12. Section 7-7-4433, MCA, is amended to read:

"7-7-4433. Sale of bonds. (1) Bonds authorized to be issued under this part ~~must~~ *may* be sold at a *public or private sale as determined by the governing body pursuant to [section 1] at a* price not less than that prescribed by the governing body, plus interest to the date of delivery of the bonds.

(2) ~~(a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.~~

~~(b)~~ Unless sold *at a private sale,* ~~to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state,~~ the bonds must be sold at public sale after notice of the sale."

Section 13. Section 7-7-4434, MCA, is amended to read:

"7-7-4434. Notice of sale of bonds. The notice of sale of bonds required by 7-7-4433(2)~~(b)~~ *for bonds sold publicly* must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the governing body may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco."

Section 14. Section 7-10-220, MCA, is amended to read:

"7-10-220. Sale of bonds. (1) Bonds authorized to be issued under this part ~~must~~ *may* be sold at a *public or private sale as determined by the governing body of the regional resource authority pursuant to [section 1] at a* price not less than that prescribed by the governing body of the regional resource authority, plus interest to the date of delivery of the bonds.

(2) ~~(a) The bonds may be sold at private sale to the United States or the state of Montana or any agency, instrumentality, or corporation of the United States or the state.~~

~~(b)~~ Unless sold *at a private sale* ~~to the United States or the state of Montana or an agency, instrumentality, or corporation of the United States or the state~~, the bonds must be sold at public sale after notice of the sale."

Section 15. Section 7-10-221, MCA, is amended to read:

"7-10-221. Notice of sale of bonds. The notice of sale of bonds required by 7-10-220(2)~~(b)~~ *for bonds sold publicly* must be published once at least 5 days prior to the sale in a newspaper of general circulation in the state, and the regional resource authority may publish the notice or summary of the notice in a financial newspaper published in the city of New York, Chicago, or San Francisco."

Section 16. Section 7-12-2172, MCA, is amended to read:

"7-12-2172. Procedure to issue bonds and warrants. (1) Subject to subsection (2), the board of county commissioners shall sell bonds or warrants

issued under the provisions of 7-12-2169 and 7-12-2171 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of the improvements that is to be assessed against the benefited property within the district, to the highest and best bidder for cash, at a price, including interest to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount *not* less than *97% of* the face value of the bonds or warrants if it determines that the sale is in the best interests of the district and the county.

(2) ~~(a) Subject to subsection (2)(b), the~~ *The* bonds or warrants may be sold at a private negotiated sale *as determined by the board of county commissioners pursuant to [section 1] and subject to the requirements of 7-12-2171.* ~~to the United States or the state of Montana or to an agency, instrumentality, corporation, or department of the state.~~

~~(b) Bonds in amounts up to $1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.~~

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 that relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, ~~insofar as they are~~ *when* applicable and not in conflict with the provisions of 7-12-2173 and this section, apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling bonds or warrants."

Section 17. Section 7-12-4204, MCA, is amended to read:

"7-12-4204. Procedure to issue bonds and warrants. (1) Subject to subsection (2), the city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of the improvements that is to be assessed against benefited property within the district, to the highest and best bidder for cash at a price, including interest to date of delivery, not less than that prescribed by the city council in the resolution calling for the sale of the bonds or warrants. The city council may fix the minimum price for the bonds or warrants in an amount *not* less than *97% of the* face value if it determines that the sale is in the best interests of the district and the city.

(2) ~~(a) Subject to subsection (2)(b), the~~ *The* bonds or warrants may be sold at a private negotiated sale *as determined by the city or town council pursuant to [section 1] and subject to the requirements of 7-12-4203.* ~~to the United States or the state of Montana or to an agency, instrumentality, corporation, or department of the state.~~

~~(b) Bonds in amounts up to $1 million may be sold through private negotiated sale to a financial institution referred to in 32-1-102 that is authorized to conduct business in the state of Montana.~~

(3) In all other cases, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, ~~insofar as the same are~~ *when* applicable and not in conflict with the provisions of 7-12-4205 and this section, apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling the bonds or warrants."

Section 18. Section 7-14-4652, MCA, is amended to read:

"7-14-4652. Details relating to sale of revenue bonds. (1) The commission may fix terms and conditions for the public or private sale or other

disposition of any authorized issue of bonds. The commission may sell bonds at *a price* not less than ~~95%~~ *97%* of ~~their~~ par or face value.

(2) Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction, or completion of which the bonds have been issued and for a period of not to exceed 2 years thereafter, as provided for in the indenture."

Section 19. Section 7-15-4507, MCA, is amended to read:

"7-15-4507. Sale of bonds. (1) ~~The~~ *Any bonds issued by the authority may be sold at public or private sale, as determined by the authority pursuant to [section 1]. If the authority conducts a public sale, the* bonds may be sold ~~at public sale held~~ after notice published once at least 10 days prior to ~~such~~ *the* sale in a newspaper having a general circulation in the city and in a financial newspaper ~~published in the city of .... or in the city of ....~~.

(2) ~~Such~~ *The* bonds may be sold ~~to the federal government~~ at private sale *pursuant to [section 1]* without any public advertisement.

(3) The bonds may be sold at ~~such~~ *a* price or prices as *determined by* the authority ~~shall determine~~."

Section 20. Section 7-31-113, MCA, is amended to read:

"7-31-113. Disposition of bonds. (1) The board of county commissioners or council, as the case may be:

(a) may provide by ~~said~~ contract for the delivery of ~~said~~ bonds ~~or any part thereof~~ at ~~their~~ *a price not less than 97% of* face value, upon the terms and conditions provided in ~~said~~ *the* contract; or

(b) may sell and dispose of ~~the same or any part thereof~~ *bonds at public or private sale at a price not less than 97% of face value* to raise funds to carry out ~~said~~ *the* contract and use ~~such~~ *the* funds for ~~that purpose and for~~ the payment of any expert ~~or experts~~ or ~~any~~ incidental expenses proper and necessary in ~~and about said~~ *completing the* contract ~~and the carrying out of the same~~.

(2) In the event ~~said~~ *that the* bonds are sold *at public sale*, ~~they shall~~ *the bonds must* be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation ~~which may be~~ printed and published in each county in the state and also by publication in at least three newspapers of general circulation printed and published in the cities of Boston and New York. ~~Such~~ *The* notice ~~shall~~ *must* be published at least once a week and ~~shall~~ *must* contain, in substance, a description of ~~said~~ *the* bonds as set out in 7-31-112."

Section 21. Section 20-9-429, MCA, is amended to read:

"20-9-429. Trustees' resolution to issue school district bonds *pursuant to public sale.* ~~Anytime~~ *If the trustees conduct a public sale, at any time* after the date of the election certificate, the trustees shall adopt a resolution calling for the sale of bonds of the school district. The resolution must specify:

(1) the number of series or installments in which the bonds are to be issued;

(2) the amount of bonds to be issued;

(3) the minimum purchase price of the bonds;

(4) the purpose or purposes of the issue;

(5) the date that the issue will bear;

(6) the period of time through which the issue will be paid;

(7) the manner of execution of the bonds;

(8) whether bids will be accepted for either serial or amortization bonds and, if so, the denomination of serial or amortization bonds;

(9) the date and time that the sale of the bonds must be conducted; and

(10) the minimum price fixed by the board of trustees for the bonds, which may not be less than 97% of the principal amount of the bonds if the board determines that the sale is in the best interests of the district."

Section 22. Section 20-9-430, MCA, is amended to read:

"20-9-430. ~~Notice of sale~~ *Sale* of school district bonds *and notice of public sale.* The trustees *may sell school district bonds at public or private sale pursuant to [section 1]. If the trustees conduct a public sale, the trustees* shall give notice of the sale of school district bonds. The notice must state the purpose for which the bonds are to be issued and the amount proposed to be issued and must be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. ..... of ..... County, state of Montana, that the trustees will on the ..... day of ....., ..., at the hour of ..... o'clock .....m. at ....., in the school district, sell to the highest and best bidder for cash (state here: general obligation or impact aid revenue) bonds of the school district in the total amount of ..... dollars ($ .....), for the purpose of .....

The bonds will be issued and sold in the aggregate principal amount of ..... dollars ($ .....) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of ....., ..., will pay interest commencing on the ..... day of ..... (month), ..., will be payable semiannually on the ..... day of ..... (month) and ..... (month) in each year thereafter, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than $ ....., with accrued interest on the principal amount of the bonds to the date of their delivery, and all bidders shall state the lowest rate of interest at which they will purchase the bonds at the price specified for the bonds. The trustees reserve the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of ..... dollars ($ .....) payable to the order of the district, which will be forfeited by the successful bidder in the event that the bidder refuses to purchase the bonds.

All bids should be addressed to the undersigned district.

.....

Presiding officer, School District No.....

of ..... County

Address: .....

ATTEST:

Subscribed and sworn to before me this ..... day of ....., ...; ..... Notary Public for the State residing at ....., Montana. My commission expires ....."

Section 23. Section 20-9-431, MCA, is amended to read:

"20-9-431. Publication of notice of sale of school district bonds. ~~The~~ *If the trustees conduct a public sale, the* trustees shall publish the notice of sale of the bonds, as provided in 17-5-106, in one or more newspapers as determined by the trustees."

Section 24. Section 20-9-432, MCA, is amended to read:

"20-9-432. Sale of school district bonds. (1) ~~The~~ *If the trustees conduct a public sale, the* trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds must be sold at not less than the minimum bid specified for bonds with accrued interest to date of delivery, and each bidder shall specify the rate of interest and purchase price at which the bidder will purchase the bonds. The trustees shall accept the bid that they judge most advantageous to the school district. Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any bids and to sell the bonds at private sale if they consider it in the best interests of the school district, except that the bonds may not be sold at less than the minimum sale price with accrued interest to date of delivery.

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating the sale of bond issues if, in the opinion of the trustees, the cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. However, bond issues prepared or negotiated for sale under this section may not be combined for any other purpose but must be entered separately on the books of the county treasurer and must be otherwise treated as separate bond issues."

Section 25. Section 85-7-1436, MCA, is amended to read:

"85-7-1436. Sale of bonds. (1) Bonds authorized to be issued may be sold at a price *not* less than *97% of* face value if the issuer determines that the sale is in the best interests of the irrigation district.

(2) ~~(a)~~ The bonds may be sold at *public or* private sale *as determined by the irrigation district pursuant to [section 1]* ~~to the United States or the state of Montana or an agency, instrumentality, or corporation thereof.~~

~~(b) If not sold to the United States or the state of Montana or an agency, instrumentality, or corporation thereof, the bonds must be sold at public sale after notice as provided in 85-7-1437~~."

Section 26. Section 85-7-1437, MCA, is amended to read:

"85-7-1437. Notice of sale of bonds. (1) Except as provided in subsection (2), the notice of sale of bonds required by 85-7-1436 *for bonds sold publicly* must be published once at least 5 days prior to such sale:

(a) in a newspaper of general circulation in the county in which the office of the issuer is located; and

(b) in a financial newspaper in New York, Chicago, or San Francisco.

(2) If the bond issue is in an amount of less than $150,000, the bond issue must be advertised at least 5 days prior to sale in a newspaper of general circulation throughout the state of Montana."

Section 27. Section 85-7-2022, MCA, is amended to read:

"85-7-2022. Sale of bonds. Bonds issued under the provisions of this part ~~shall~~ *must* be issued, negotiated, and sold by or under the direction of the board of commissioners but ~~shall never~~ *may not* be sold for less than ~~90%~~ *97%* of ~~their~~

par value and accrued interest ~~thereon~~ to *the* date of delivery. The board may sell ~~said~~ *the* bonds from time to time in ~~such~~ quantities ~~as may be~~ necessary and most advantageous to raise money for the purposes for which ~~said~~ *the* bonds were issued."

Section 28. Section 85-7-2023, MCA, is amended to read:

"85-7-2023. Notice of sale of bonds. Except as provided in 85-7-2033 *regarding a private sale*, before making any sale*,* the board shall, by resolution at a meeting, declare its intention to sell a specified amount of the bonds and the day*,* ~~and~~ hour*,* and place of *the* sale. The board shall ~~cause~~ *enter* the resolution ~~to be entered in~~ *into* the minutes and *provide* notice of the sale ~~to be given~~ by publication at least once a week for 3 successive calendar weeks in a newspaper in the county where the office of the board of commissioners is located, and the notice may be published in any other newspaper at the board's discretion. The notice ~~shall~~ *must* state that sealed proposals will be received by the board at its office~~,~~ for the purchase of bonds~~,~~ until the day and hour named in the resolution. At the time appointed*,* the board shall open the proposals and award the purchase of the bonds or any portion or portions ~~thereof~~ *of the bonds* to the highest responsible bidder or bidders. The board may reject any or all bids. ~~In case no~~ *If an* award is *not* made, the board may either readvertise the bonds or any part of the bonds for sale or sell the bonds or any part of the bonds at private sale. Coupons evidencing unearned interest must be detached and canceled."

Section 29. Section 85-7-2033, MCA, is amended to read:

"85-7-2033. Private sale of bonds ~~to certain governmental entities~~. The district may sell bonds issued under this part ~~to the United States, the state of Montana, or any agency, department, or instrumentality of these governments~~ *at private sale* by negotiation and without public advertisement or solicitation of bids *pursuant to [section 1]*."

Section 30. Section 85-8-503, MCA, is amended to read:

"85-8-503. Sale of notes or bonds. Upon execution, the notes or bonds ~~shall~~ *must* be deposited with the county treasurer, who shall register the ~~same~~ *notes or bonds* in a book for that purpose, ~~which shall show~~ *that documents* the number and amount of each note or bond, its date, the date payable and redeemable, where payable, *and* the person to whom issued. Upon sale of the notes or bonds, the county treasurer shall deliver the ~~same~~ *notes or bonds* to the person or persons to whom *they were* sold, upon ~~their~~ *the person or persons* making payment for the ~~same~~ *notes or bonds*. ~~Said~~ *The* notes or bonds may be sold by the commissioners at either public or private sale, either with or without advertisement, ~~as they may deem it to~~ *if it is considered to be in* the best interests of the district. ~~Said~~ *The* notes or bonds ~~shall~~ *may* not be sold at less than ~~90%~~ *97%* of ~~their~~ face value. ~~Said~~ *The* notes or bonds ~~shall~~ *may* not be held to make the commissioners personally liable but ~~shall~~ constitute a lien upon the assessments for the repayment of the principal and interest of ~~such~~ *the* notes or bonds."

Section 31. Section 85-9-625, MCA, is amended to read:

"85-9-625. Issuance of bonds — details of sale. (1) If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. *The bonds may be sold at public or private sale as determined by the directors pursuant to [section 1].* ~~After~~ *If the directors conduct a public sale, after* adequate notice that sealed proposals will be received, the directors may award the purchase of all or a part of the issue to the best bidder or bidders and may sell at private sale any or all bonds not sold on bids.

(2) The bonds ~~will~~ *must* be sold for *a price that is* not less than ~~their~~ *97% of* par *or face* value with accrued interest to date of delivery, and all bidders ~~must~~ *shall* state the lowest rate of interest at which they will purchase the bonds ~~at par~~. The board shall reserve the right to reject any and all bids and to sell the ~~said~~ bonds at private sale."

Section 32. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 5, part 1, and the provisions of Title 17, chapter 5, part 1, apply to [section 1].

Section 33. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 34. Effective date. [This act] is effective on passage and approval.

Section 35. Applicability. [This act] applies to local government actions commencing on or after [the effective date of this act].

Approved April 22, 2011

CHAPTER NO. 254

[HB 541]

AN ACT PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM REGULATING DOMESTIC LIVESTOCK TRAILING AS A COMMERCIAL ACTIVITY; EXEMPTING DOMESTIC LIVESTOCK TRAILING FROM THE MONTANA ENVIRONMENTAL POLICY ACT; AUTHORIZING DOMESTIC LIVESTOCK TRAILING ACROSS LANDS DESIGNATED AS WILDLIFE MANAGEMENT AREAS; AMENDING SECTIONS 87-1-301 AND 87-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Department of Fish, Wildlife, and Parks (MDFWP) is considering whether to deem and classify domestic livestock trailing as a commercial use that is subject to licensing or permitting by the department, the payment of a licensing or permitting fee, and an environmental review under the Montana Environmental Policy Act; and

WHEREAS, MDFWP has adopted administrative rules governing the commercial use of lands under the control, administration, and jurisdiction of the department; and

WHEREAS, livestock grazing, farming, haying, fencing, and timber harvest have been exempted from those rules; and

WHEREAS, given those exemptions for farming and ranching activities, the Legislature believes that domestic livestock trailing should also be exempt; and

WHEREAS, domestic livestock trailing is a necessary component of ranching and farming in Montana; and

WHEREAS, in order to sustain Montana's valuable farm and ranching economy and land bases associated with that economy, farmers and ranchers must be encouraged and have the right to engage in activities that allow them to remain in farming and ranching; and

WHEREAS, MDFWP's attempt to classify domestic livestock trailing as a commercial use and to subject trailing activities to environmental review interferes with the Legislature's directive under Article XII, section 1, of the

Montana Constitution to enact laws that protect, enhance, and develop all agriculture; and

WHEREAS, the Legislature has a strong interest in protecting the health of Montana's agriculture industry.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

"87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) *except as provided in 87-1-303(3),* shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."

Section 2. Section 87-1-303, MCA, is amended to read:

"87-1-303. Rules for use of lands and waters. (1) ~~The~~ *Except as provided in subsection (3), the* commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the

operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement.

(3) (a) The commission may not regulate or classify domestic livestock trailing as a commercial activity or commercial use that is subject to licensing, permitting, or fee requirements. Domestic livestock trailing on land owned or controlled by the department is exempt from the requirements of Title 75, chapter 1, parts 1 through 3.

(b) The commission may authorize domestic livestock trailing across land owned or controlled by the department that is designated as a wildlife management area. The commission may adopt rules governing the timing of and the route to be used for domestic livestock trailing activities to the extent that the rules are necessary both to enable the trailing of domestic livestock across the designated wildlife management area and to protect and enhance state lands. The rules may not:

(i) require a fee for domestic livestock trailing or related activities; or

(ii) prohibit or unreasonably interfere with domestic livestock trailing activities.

(4) For the purposes of this section, the following definitions apply:

(a) "Domestic livestock" means domestic animals kept for farm and ranch purposes, including but not limited to horses, cattle, sheep, goats, and dogs.

(b) "Domestic livestock trailing" means the entering upon and crossing of department lands and the use of the lands for forage by domestic livestock for a maximum of 96 consecutive hours."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 255

[HB 552]

AN ACT REVISING WORKERS' COMPENSATION LAWS RELATED TO CERTAIN PUBLIC SAFETY VOLUNTEERS; ALLOWING LEVIES USED TO FUND PUBLIC SAFETY VOLUNTEERS' DISABILITY INCOME INSURANCE TO BE USED ALTERNATIVELY FOR WORKERS' COMPENSATION COVERAGE; PROVIDING COVERAGE FOR VOLUNTEER EMERGENCY MEDICAL SERVICE PROVIDERS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 7-6-621, 7-33-2109, 7-33-2209, 7-33-2403, 7-33-4109, 7-33-4111, 7-34-102, 39-71-118, AND 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-621, MCA, is amended to read:

"7-6-621. Volunteer firefighters' disability income insurance authorized — voted levy — fund. (1) Disability income insurance, as defined in 33-1-235, purchased for volunteer firefighters must provide that:

(a) payments or benefits are paid only for an injury received as a volunteer firefighter; and

(b) the duration of payments or benefits may not exceed the lesser of 1 year or until the treating physician determines that the beneficiary is no longer disabled.

(2) If the voters have approved a levy for the purchase of volunteer firefighters' disability income insurance *or workers' compensation coverage*, the governing body of a local government entity may establish a volunteer firefighters' disability income insurance account. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(3) Money may be expended from the account to purchase disability income insurance coverage meeting the provisions of subsection (1) *or for workers' compensation coverage* for volunteer firefighters organized or deployed pursuant to any of the provisions of Title 7, chapter 33, parts 21 through 24 or 41.

(4) Money in the account must be invested as provided by law. Interest and income from the investment of money in the account must be credited to the account."

Section 2. Section 7-33-2109, MCA, is amended to read:

"7-33-2109. Tax levy, debt incurrence, and bonds authorized — voted levy for volunteer firefighters' disability income *or workers' compensation* coverage. (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) Subject to 15-10-425, the board of county commissioners may levy a tax upon all taxable property within a rural fire district for the purpose of purchasing disability income insurance coverage *or workers' compensation coverage* for the volunteer firefighters of the district as provided in 7-6-621.

(3) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(1)(d), to secure financing necessary to procure equipment and buildings, including real property, to house the equipment.

(4) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district.

(5) The amount of debt incurred pursuant to subsection (3) and the amount of bonds issued pursuant to subsection (4) and outstanding at any time may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(6) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22."

Section 3. Section 7-33-2209, MCA, is amended to read:

"7-33-2209. Finance of fire control activities — voted levy for volunteer firefighters' disability income insurance *or workers' compensation coverage.* (1) The county governing body may appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) Subject to 15-10-420, if the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax for the purposes of subsection (1).

(3) Subject to 15-10-425, the county governing body may levy a tax for the purpose of purchasing disability income insurance coverage *or workers' compensation coverage* for volunteer firefighters of volunteer rural fire control crews and county volunteer fire companies as provided in 7-6-621."

Section 4. Section 7-33-2403, MCA, is amended to read:

"7-33-2403. Operation of fire service area — voted levy for volunteer firefighters' disability income insurance *or workers' compensation coverage.* (1) Whenever the board of county commissioners has established a fire service area, the commissioners may:

(a) govern and manage the affairs of the area;

(b) appoint five qualified trustees to govern and manage the affairs of the area; or

(c) authorize the election of five qualified trustees to govern and manage the affairs of the area. The term of office and procedures for nomination and election are the same as those provided for election of rural fire district trustees in 7-33-2106.

(2) Subject to 15-10-425, the commissioners may levy a tax upon all property within the county for the purpose of buying disability income insurance coverage *or workers' compensation coverage* for volunteer firefighters deployed within the fire service area as provided in 7-6-621.

(3) If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 apply and 7-33-2106 applies whether the trustees are elected or appointed, except that the trustees shall prepare annual budgets and request a schedule of rates for the budget."

Section 5. Section 7-33-4109, MCA, is amended to read:

"7-33-4109. Supplementary volunteer fire department authorized for cities of second class — voted levy for volunteer firefighters' disability income insurance *or workers' compensation coverage.* (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) The city commission or governing department is exempted from compliance with 7-33-4128 to the extent that section applies to the volunteer fire department by way of penalties and infringements.

(3) A volunteer is an enrolled member of the volunteer fire department, assists the paid fire department, and is eligible to serve only on the board of trustees of the fire department relief association of the city. However, not more than three volunteer members may be on the board of trustees. A person who is a volunteer for the purposes of this section is not entitled to receive a service pension.

(4) The governing body of the city may:

(a) pay an enrolled volunteer firefighter a minimum of $1 for attending a fire and a minimum of $1 for each hour or fraction of an hour after the first hour in active service at a fire or returning equipment to its proper place;

(b) subject to 15-10-425, levy a tax upon all property within a fire district for the purpose of buying disability income insurance coverage *or workers' compensation coverage* for the volunteer firefighters of the volunteer fire department as provided in 7-6-621.

(5) In attending fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department."

Section 6. Section 7-33-4111, MCA, is amended to read:

"7-33-4111. Tax levy for volunteer fire departments — voted levy for volunteer firefighters' disability income insurance *or workers' compensation coverage.* (1) For the purpose of supporting volunteer fire departments in any city or town that does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may, subject to 15-10-420, levy, in addition to other levies permitted by law, a tax on the taxable value of all taxable property in the city or town.

(2) Subject to 15-10-425, a city or town may levy a tax on the taxable value of all taxable property in the city or town for the purpose of purchasing disability income insurance coverage *or workers' compensation coverage* for volunteer firefighters of volunteer fire departments as provided in 7-6-621."

Section 7. Section 7-34-102, MCA, is amended to read:

"7-34-102. Ambulance service mill levy permitted. Subject to 15-10-420 and in addition to all other levies authorized by law, each county, city, or town may levy an annual tax on the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service. *These costs may include workers' compensation coverage for emergency medical technicians on volunteer duty with the ambulance service or members of a paid or volunteer nontransporting medical unit defined in 50-6-302.*"

Section 8. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, ~~and~~ volunteer firefighter, *and volunteer emergency medical technician* defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations,

except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation

coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) *(a)* With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(b) A fire district, fire service area, or volunteer fire department formed under Title 7, chapter 33, an ambulance service not otherwise covered by subsection (1)(g), or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this chapter a volunteer firefighter or a volunteer emergency medical technician.

(4) (a) *The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.*

(b) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

~~(b)~~*(c)* The term "volunteer hours" means all the time spent by a volunteer firefighter *or a volunteer emergency medical technician* in the service of an employer *or as a volunteer for a town, city, or county*, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole

proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(5)(d)~~ *(6)(d)*. A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) ~~All~~ *For the purposes of an election under this subsection (6), all* weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium ~~and weekly benefit~~ *and weekly benefit* purposes based on the number of volunteer hours of each firefighter*, but no more than 60 hours,* times the *state's* average weekly wage divided by 40 hours~~, subject to a maximum of 1 1/2 times the state's average weekly wage~~.

~~(c) A~~ *(c) A* self-employed sole proprietor or partner who has elected not to be covered under this chapter, ~~but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described~~

~~in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed~~ *but who is covered as a volunteer firefighter pursuant to subsection (7)(a), and when injured in the course and scope of employment as a volunteer firefighter may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed* wage.

(8) Except as provided in *Title 39,* chapter 8 ~~of this title~~, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d).

(12) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit.

(b) In the event of an election under subsection (12)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician pursuant to subsection (12)(a), and when injured in the course and scope of employment as a volunteer emergency medical technician may in addition to the benefits described in subsection (12)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If an election is made as provided in subsection (12)(a), payrolls must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency medical technician who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter."

Section 9. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;

(b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) Except as provided in ~~39-71-118(7)(c)~~ *39-71-118(7)(c) and (12)(c)*, the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) For the purposes of calculating compensation benefits for an employee working for an employer, as provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as of the date of injury or for the period in which the premium is due."

Section 10. Effective date. [This act] is effective July 1, 2011.

Approved April 21, 2011

CHAPTER NO. 256

[HB 602]

AN ACT ESTABLISHING A PROCESS FOR THE LEGISLATURE TO PROVIDE DIRECTION FOR THE IMPLEMENTATION OF EXEMPT WELL LAWS; REQUIRING AN INTERIM STUDY OF ISSUES RELATED TO

GROUND WATER WELLS EXEMPT FROM PERMITTING; TEMPORARILY PROHIBITING RULEMAKING FOR WELLS EXEMPT FROM PERMITTING; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings. The legislature finds that:

(1) the state of Montana has managed the allocation of water under the prior appropriation doctrine for more than 100 years;

(2) Article IX, section 3, of the Montana constitution recognizes and confirms all existing water rights;

(3) the right to the use of water through a water right is a recognized property right;

(4) the development of ground water wells that are exempt from permitting may have an adverse effect on other water rights;

(5) the Water Use Act requires the department of natural resources and conservation to coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources; and

(6) the Water Use Act does not provide the department of natural resources and conservation with clear direction on the administration of ground water wells exempt from permitting.

Section 2. Interim study. (1) The water policy interim committee, provided for in 5-5-231, shall conduct a study of:

(a) wells that are exempt from permitting pursuant to 85-2-306, including:

(i) determining the number of existing exempt wells and estimating the number of ground water wells that may be exempted from permitting over the next decade under current laws and regulations;

(ii) summarizing the types of beneficial uses to which water from exempt wells is applied;

(iii) analyzing the amount of water reasonably necessary for the various beneficial uses served by exempt wells compared to the current statutory limits for flow rate and volume;

(iv) exploring options to provide accurate measurement of water appropriated via exempt wells;

(v) examining enforcement options for exempt wells to ensure that they do not exceed statutory limits or disrupt the priority system for water right administration governed by the Water Use Act and the Montana constitution;

(vi) examining applicable research and analysis conducted by the ground water investigation program at the Montana bureau of mines and geology provided for in 85-2-525;

(vii) examining the historical treatment of exempt wells and the evolution of laws and rules governing exempt wells;

(viii) analyzing how the water appropriated by exempt wells may affect surface water appropriations, including existing claims, permits, certificates, and reservations; and

(ix) examining the legal options for integrating exempt wells into the principle that first in time is first in right when senior water rights are not fulfilled;

(b) the statutes, rules, programs, and policies employed by other prior appropriation states for exempt wells, including legal challenges;

(c) the adequacy of existing programs and tools for managing and mitigating the development of wells that would otherwise be exempt from permitting, including but not limited to controlled ground water areas created pursuant to Title 85, chapter 2, part 5, water mitigation banks, community water system incentives, and in-lieu-of-fee programs;

(d) the relationship between exempt wells and land use decisions, including the relationship between exempt wells and individual septic systems, the cost comparison of installing public water systems or extending existing water infrastructure, and the role of local governments in requiring alternatives to exempt wells; and

(e) the rulemaking authority of the department of natural resources and conservation in relation to the statutory policy and purpose provided for in 85-2-101.

(2) The committee shall prepare a report to submit to the 63rd legislature that provides clear policy direction and necessary legislation to guide Montana's policy regarding wells that may be exempt from the permitting process.

Section 3. Limit on rulemaking authority. (1) Except as provided in subsection (2), the department of natural resources and conservation may not adopt rules to implement the provisions of 85-2-306(3) for ground water wells that are exempt from permitting until October 1, 2012.

(2) The department may adopt rules to implement amendments to 85-2-306(3) that were passed and approved by the 62nd legislature for:

(a) appropriations by a local governmental fire agency organized under Title 7, chapter 33, provided that the appropriation is used only for emergency fire protection; or

(b) nonconsumptive appropriations for geothermal heating or cooling exchange applications.

Section 4. Appropriation. (1) There is appropriated $15,000 from the general fund for the biennium beginning July 1, 2011, to the water policy interim committee for the purpose of completing the study required pursuant to [section 2].

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 4] is effective July 1, 2011.

Section 6. Termination. [This act] terminates June 30, 2013.

Approved April 21, 2011

CHAPTER NO. 257

[SB 30]

AN ACT REVISING THE COLLECTION REQUIREMENTS UNDER THE STATE SUPERFUND LAWS; REQUIRING LIABLE PARTIES TO PAY INTEREST IF MONTHLY BILLS FOR REMEDIAL ACTION COSTS ARE NOT PAID WITHIN 30 DAYS; AMENDING SECTION 75-10-722, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-722, MCA, is amended to read:

"75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department may require a person liable under 75-10-715 to pay the amount of the state's remedial action costs, including interest and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department ~~within 60 days~~ after receipt of notice that the costs and penalties are due, the department ~~shall~~ *may* bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) If the department provides a notice that the state's remedial action costs are due, the department shall assess and collect interest on the unpaid amount at the rate provided for in 25-9-205:

(a) after 30 days of receipt of the notice if the notice covers costs incurred during a time period that is 1 month or less;

~~(a)~~*(b)* after 60 days of receipt of the notice if the notice covers costs incurred during a time period that is ~~one-quarter of a year~~ *more than 1 month and not more than 3 months* ~~or less~~;

~~(b)~~*(c)* after 90 days of receipt of the notice if the notice covers costs incurred during a time period that is more than ~~one-quarter of a year~~ *3 months* and ~~less than or equal to one-half of a year~~ *not more than 6 months*; and

~~(c)~~*(d)* after 120 days of receipt of the notice if the notice covers costs incurred during a time period that is more than ~~one-half of a year~~ *6 months*.

(5) An action to recover remedial action costs and interest may be brought under this section at any time after any remedial action costs and interest have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs and interest that is binding on any subsequent action or actions to recover further remedial action costs and interest. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part. The court may disallow the associated interest if it determines, based on the record, that the liable person can show that the costs are not reasonable.

(6) An initial action brought under 75-10-715(4) or a contribution action for costs incurred under this part must be commenced within 6 years after initiation of physical onsite construction of the final permanent remedy.

(7) Remedial action costs, interest, and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 21, 2011

CHAPTER NO. 258

[SB 124]

AN ACT REORGANIZING AND RECODIFYING FISH AND GAME CODE CRIMINAL STATUTES AND DEFINITIONS; CLARIFYING PENALTIES; AMENDING SECTIONS 45-6-101, 45-6-203, 81-2-121, 87-1-120, 87-1-232, 87-1-234, 87-1-601, 87-1-803, 87-1-804, 87-2-101, 87-2-104, 87-2-106, 87-2-202, 87-2-411, 87-2-521, 87-2-807, 87-3-110, 87-3-121, 87-3-126, 87-3-204, 87-3-221, 87-3-222, 87-3-224, 87-3-403, 87-4-201, 87-4-306, 87-4-407, 87-4-427, 87-4-601,

87-4-609, 87-4-803, 87-4-807, 87-4-903, 87-4-915, 87-4-1002, 87-5-204, 87-5-703, AND 87-5-721, MCA; AND REPEALING SECTIONS 87-1-102, 87-1-108, 87-1-109, 87-1-110, 87-1-111, 87-1-112, 87-1-113, 87-1-114, 87-1-115, 87-1-121, 87-1-125, 87-1-208, 87-1-231, 87-2-103, 87-2-109, 87-2-110, 87-2-112, 87-2-114, 87-2-120, 87-2-203, 87-2-205, 87-2-509, 87-2-604, 87-2-804, 87-3-101, 87-3-102, 87-3-103, 87-3-104, 87-3-105, 87-3-107, 87-3-108, 87-3-109, 87-3-111, 87-3-112, 87-3-116, 87-3-117, 87-3-118, 87-3-123, 87-3-124, 87-3-125, 87-3-130, 87-3-134, 87-3-135, 87-3-141, 87-3-142, 87-3-143, 87-3-144, 87-3-205, 87-3-206, 87-3-207, 87-3-209, 87-3-301, 87-3-302, 87-3-304, 87-3-305, 87-3-306, 87-3-307, 87-3-401, 87-3-402, 87-3-404, 87-3-405, 87-3-501, 87-3-503, 87-3-504, 87-3-505, 87-3-506, 87-3-507, 87-4-608, AND 87-4-1014, MCA.

WHEREAS, the 2007 Legislature passed House Joint Resolution No. 16, urging that revision of the criminal codes within Title 87 of the Montana Code Annotated be given priority; and

WHEREAS, House Joint Resolution No. 16 noted that practitioners, judges, and citizens find that the criminal codes intertwined within the fish and game laws in Title 87 are difficult to read, understand, and prosecute; and

WHEREAS, House Joint Resolution No. 16 directed that revision of the Title 87 criminal code should not include policy changes to current laws and should adhere to the intent of the legislatures that crafted the laws; and

WHEREAS, in 2008, the Director of Fish, Wildlife, and Parks appointed a Title 87 criminal code revision working group, consisting of Justices of the Peace, County Attorneys, an Assistant Attorney General, legal counsel and the enforcement administrator of the Department of Fish, Wildlife, and Parks, and legislative staff; and

WHEREAS, the working group met numerous times and spent countless hours crafting a revision that makes the Title 87 criminal code more understandable without making substantive or policy changes to present law; and

WHEREAS, revision of the fish and game criminal statutes will benefit the hunting and fishing public, magistrates, and prosecutors by codifying crimes and penalties in a separate chapter of Montana law, rather than being intertwined throughout Title 87.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. Unless the context requires otherwise, in [sections 1 through 80], the following definitions apply:

(1) "Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.

(2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under Title 87, chapter 4, part 4.

(3) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(4) "Closed season" means the time during which game birds, fish, game animals, and fur-bearing animals may not be lawfully taken.

(5) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(6) "Field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(7) "Fishing" means to take fish or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(8) (a) "Fur dealer" means a person engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or predatory animals.

(b) If a fur dealer resides in Montana or if the fur dealer's principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

(9) "Fur farm" means enclosed land upon which furbearers are kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers.

(10) (a) "Fur-bearing animal" or "furbearer" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(b) As used in Title 87, chapter 4, part 10, "furbearer" does not include fox or mink.

(11) "Game animal" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(12) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species Perca flavescens (yellow perch); all species of the genus Pomoxis (crappie); and the species Ictalurus punctatus (channel catfish).

(13) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(14) "Knowingly" has the meaning provided in 45-2-101.

(15) "Livestock" includes ostriches, rheas, and emus.

(16) "Migratory game bird" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

(17) "Negligently" has the meaning provided in 45-2-101.

(18) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(19) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(20) "Participating state" means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact.

(21) "Person" means an individual, association, partnership, and corporation.

(22) "Predatory animal" means coyote, weasel, skunk, and civet cat.

(23) "Purposely" has the meaning provided in 45-2-101.

(24) "Raptor" means all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(25) "Resident" has the meaning provided in 87-2-102.

(26) "Roadside menagerie" means any place where one or more wild animals are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

(27) "Sale" means a contract by which a person:

(a) transfers an interest in either game or fish for a price; or

(b) transfers, barters, or exchanges an interest either in game or fish for an article or thing of value.

(28) "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock.

(29) "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(30) "Trap" means to take or participate in the taking of any wildlife protected by state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(31) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(32) "Wild animal" means an animal that is wild by nature as distinguished from common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

(33) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity for use other than public exhibition.

(34) "Wild buffalo" means buffalo or bison that have not been reduced to captivity.

(35) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or any facility participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting wild animals for public viewing.

Section 2. Designation of violations. A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor unless a felony is expressly provided by law.

Section 3. Fish and game violation as inchoate offense. Any violation of this title is an offense for purposes of the crimes of attempt, solicitation, and conspiracy set out in Title 45, chapter 4.

Section 4. Fish and game code not to supersede criminal code — statute of limitations. (1) The penalty provisions of this title are intended to supplement but not supersede the provisions of Title 45. Nothing in this title limits the prosecution of any conduct defined as an offense in Title 45.

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of any offense under this title are those time limitations specified in 45-1-205.

Section 5. Penalties in addition to Title 37. Notwithstanding the provision of this chapter, the penalties provided by this chapter are in addition to any penalties provided in Title 37, chapter 47.

Section 6. Lawful taking to protect livestock or person. (1) [Sections 1 through 80] may not be construed to impose, by implication or otherwise, criminal liability for the taking of wildlife protected by this title if the wildlife is attacking, killing, or threatening to kill a person or livestock. However, for purposes of protecting livestock, a person may not kill or attempt to kill a grizzly bear unless the grizzly bear is in the act of attacking or killing livestock.

(2) A person may kill or attempt to kill a wolf or mountain lion that is in the act of attacking or killing a domestic dog.

(3) A person who, under this section, takes wildlife protected by this title shall notify the department within 72 hours and shall surrender or arrange to surrender the wildlife to the department.

Section 7. Violation of commission or department order or rule. A person who purposely, knowingly, or negligently violates an order or rule of the commission or department shall be fined not less than $50 or more than $500. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 8. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal. (1) A person may not possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit the possession, shipping, or transportation of:

(a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, except that the sale or purchase of

a hide, head, or mount of a grizzly bear is prohibited, except as provided in [section 13];

(b) naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) paddlefish roe as caviar under the provisions of 87-4-601; or

(e) captive-reared migratory waterfowl.

(3) A person may not possess, ship, or transport live fish away from the body of water in which the fish were taken except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted by the laws of this state;

(b) fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within the boundaries of the eastern Montana fishing district, as established by commission regulations.

(4) The possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the fish, bird, or animal is found killed, captured, or took the fish, bird, or animal.

(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in [sections 68 and 69]. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(6) The following penalties apply for a violation of this section:

(a) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a game fish or bird and if the value of all or part of the game fish or bird or combination thereof does not exceed $1,000, the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(e) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a fur-bearing animal or pelt of a fur-bearing animal and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(f) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds $1,000, the person shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(7) A person convicted of unlawful possession of more than double the legal bag limit may be subject to the additional penalties provided in [section 63].

(8) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

(9) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 9. Unlawful taking, killing, trapping, labeling, or packaging of fur-bearing animal or pelt. (1) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, labeling, or packaging a fur-bearing

animal or the pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(2) A person convicted of unlawful taking of more than double the legal bag limit of a fur-bearing animal may be subject to the additional penalties provided in [sections 63 and 64].

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 10. Hunting or fishing during closed season. (1) A person may not hunt or attempt to hunt:

(a) any game animal or game bird or fish for or catch any fish during the closed season on any species of game animal, game bird, or fish; or

(b) an upland game bird until the commission provides an open season on that upland game bird. The open season on mourning doves is restricted to the open season on upland game birds.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting during a closed season may be subject to the additional penalties provided in [sections 63 and 64].

Section 11. Waste of game animal, game bird, or game fish. (1) Except as provided in subsection (3), a person responsible for the death of any game animal, game bird, or game fish suitable for food may not purposely or knowingly waste the game by:

(a) detaching or removing only the head, hide, antlers, tusks, or teeth or any or all of these parts from the carcass of a game animal;

(b) transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandoning the carcass of a game animal or any portion of the carcass suitable for food in the field.

(2) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food may not purposely or knowingly waste the game by:

(a) transporting, storing, or hanging the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposing of or abandoning any portion of the animal, bird, or fish that is suitable for food.

(3) A person responsible for the death of a mountain lion or wolf, except as provided in [section 6], may not abandon the head or hide in the field.

(4) A person responsible for the death of a grizzly bear wastes the game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes pursuant to 87-3-110.

(5) For the purposes of this section, the meat of a grizzly bear or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of a violation of this section may be fined not less than $50 or more than $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(7) A person convicted of waste of game by abandonment in the field may be subject to the additional penalties provided in [section 63].

Section 12. Unlawful sale of game fish, bird, game animal, or fur-bearing animal. (1) A person may not purposely or knowingly sell, purchase, or exchange all or part of any game fish, bird, game animal, or fur-bearing animal.

(2) The value of the game fish, bird, game animal, or fur-bearing animal must be determined from the schedules of restitution values set out in [sections 68 and 69]. The value of game fish, birds, game animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(3) This section does not prohibit the:

(a) sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in [section 13];

(b) sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-601; or

(e) sale, purchase, or exchange of captive-reared migratory waterfowl.

(4) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed $1,000, then the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court.

(5) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds $1,000, then the

person shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(6) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

Section 13. Unlawful sale of grizzly bear. (1) A person in possession of a lawfully killed grizzly bear or a hide, head, or mount of a grizzly bear may not sell it if it has not been registered with the department pursuant to 87-3-110.

(2) A person convicted of a violation of this section shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

Section 14. Unlawful use of aircraft or boat. (1) Except as provided in 87-3-126, a person may not:

(a) kill, take, or shoot at any game bird, game animal, or fur-bearing animal from an aircraft, including a helicopter;

(b) use an aircraft or helicopter for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game bird, migratory bird, game animal, or fur-bearing animal; or

(c) if in an aircraft, including a helicopter, spot or locate any game animal or fur-bearing animal and communicate the location of the game animal or fur-bearing animal to any person on the ground by means of any air-to-ground communication signal or other device as an aid to hunting or pursuing wildlife.

(2) Unless permitted by the department, a person may not use an aircraft, including a helicopter, for hunting purposes within the boundaries of a national forest except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports that have been established on private property or that have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies. The provisions of this subsection do not apply:

(a) during emergency situations;

(b) when search and rescue operations are being conducted; or

(c) for predator control as permitted by the department of livestock.

(3) A person may not use a powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game bird, game animal, or fur-bearing animal.

(4) The following penalties apply for a violation of this section:

(a) Unless otherwise provided in this subsection (4), a person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be

imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful use of aircraft or boat to kill or take a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful use of aircraft or boat to kill or take a deer, antelope, elk, or mountain lion, the person shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful use of aircraft or boat to kill or take a fur-bearing animal, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

Section 15. Unlawful contest or prize. (1)(a) Except as provided in subsections (1)(b) and (1)(c), a person, firm, or club may not offer or give a prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fowl, or fur-bearing animal or any bird or animal protected by law.

(b) A prize may be awarded for any one game bird or fur-bearing animal on the basis of size, quality, or rarity.

(c) A person may conduct or sponsor a contest for which the monetary prize, certificate, or award does not exceed $50 for a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, or having the longest body or any similar contest based upon the size or weight of a game animal or part of a game animal. The monetary restriction provided in this subsection (1)(c) does not apply to recognition given by a nationally established and recognized Boone and Crockett trophy institute.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 16. Harassment. (1) (a) A person may not:

(i) intentionally interfere with the lawful taking of a wild animal or fishing by another;

(ii) with intent to prevent or hinder its lawful taking or its capture, disturb a wild animal or engage in an activity or place in its way any object or substance that will tend to disturb or otherwise affect the behavior of a wild animal; or

(iii) disturb an individual engaged in the lawful taking of a wild animal or fishing with intent to prevent the taking of the animal or the capture of the fish.

(b) This subsection (1) does not:

(i) prohibit a landowner or lessee from taking reasonable measures to prevent imminent danger to domestic livestock and equipment; or

(ii) prohibit or curtail normal landowner operations or lawful uses of water.

(2) A person convicted of a violation of this section shall be fined not more than $500 or be imprisoned for not more than 30 days, or both. A person convicted of a second or subsequent violation shall be fined not more than $1,000 or be imprisoned for not more than 1 year, or both.

(3) A court of general jurisdiction may enjoin conduct in violation of this section upon petition by a person affected or who reasonably may be affected by that conduct and upon a showing that the conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances it will be repeated.

(4) As used in this section:

(a) "fishing" means the lawful means of fishing as described in [section 45];

(b) "taking" means the pursuit, hunting, trapping, shooting, or killing of a wild animal on land upon which the affected person has the right or privilege to pursue, hunt, trap, shoot, or kill the wild animal; and

(c) "wild animal" means a game animal, migratory game bird, upland game bird, fur-bearing animal, predatory animal, or fish.

Section 17. Unlawful supplemental feeding. (1) A person may not provide supplemental feed attractants to game animals by:

(a) purposely or knowingly attracting any cloven-hoofed ungulates, bears, or mountain lions with supplemental feed attractants;

(b) after having received a previous warning, negligently failing to properly store supplemental feed attractants and allowing any cloven-hoofed ungulates, bears, or mountain lions access to the supplemental feed attractants; or

(c) purposely or knowingly providing supplemental feed attractants in a manner that results in an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.

(2) A person is not subject to civil or criminal liability under this section if the person is engaged in:

(a) the normal feeding of livestock;

(b) a normal agricultural practice;

(c) cultivation of a lawn or garden;

(d) the commercial processing of garbage; or

(e) recreational feeding of birds unless, after having received a previous warning by the department, the person continues to feed birds in a manner that attracts cloven-hoofed ungulates or bears and that may contribute to the transmission of disease or constitute a threat to public safety.

(3) This section does not apply to supplemental feeding activities conducted by the department for disease control purposes.

(4) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 18. Shooting at simulated wildlife. (1) A person may not discharge a firearm or other hunting implement at a simulated wildlife decoy in violation of any state statute or commission rule regulating the hunting of the wildlife being simulated when the decoy is being used by a certified peace officer.

(2) A person convicted of a violation of this section is subject to the same penalty as prescribed for the state statute or commission rule violated during the attempted hunting of the actual wildlife being simulated. In addition, the person shall pay restitution of $50 to the department for the repair of damages to simulated wildlife decoys.

Section 19. Checking station offenses. (1) A person, upon the request of the director, the director's authorized representative, or any game warden, shall produce for inspection any current fish and game license that has been issued to the person and any game animals, birds, fish, or fur-bearing animals in the person's possession. Hunters or anglers entering or leaving areas for which checking stations have been established shall stop and report if a checking station is on the hunter's or angler's route of travel to or from the hunting or fishing area and personnel are on duty.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 20. Unlawful relocation of fish. (1) A person or firm may not:

(a) place or cause to be placed caged live fish in any of the public waters of the state of Montana, except as provided by department regulation;

(b) without written department approval, move live or dead salmonid fish or eggs from one in-state location to another when the fish or eggs are known to be infected with fish pathogens specified by the department as posing a threat to fisheries;

(c) import live salmonid fish or eggs into Montana without meeting the requirements of 87-3-221; or

(d) discard, place, or allow uncertified salmonid fish, parts, or eggs that have been transported into Montana to enter into surface waters other than sewage or disposal systems pursuant to 87-3-222(2).

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or

trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 21. Field trial offenses. (1) A person may not conduct a field trial unless the person has a permit under 87-4-915.

(2) An applicant receiving a permit to conduct a field trial may not violate or authorize violation of any of the terms of the permit.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 22. Hunting, fishing, or trapping without license. (1) Except as provided in subsection (2), a person may not:

(a) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds except as provided by law or as provided by the department;

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish, except at the places and during the periods and in the manner established by law or as prescribed by the department;

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of fur-bearing animals without first having obtained a proper and valid license or permit from the department to do so;

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident; or

(e) hunt migratory game birds without first having obtained a valid migratory game bird license from the department if the person is 16 years of age or older.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person convicted of hunting without a license may be subject to the additional penalties provided in [sections 63 and 64].

(5) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 23. Unlawful procurement of license, permit, or tag. (1) A person may not:

(a) subscribe to or make any materially false statement on an application or license. Any material false statement contained in an application renders the license issued pursuant to it void.

(b) purchase a hunting, fishing, or trapping license without first having obtained a wildlife conservation license pursuant to 87-2-201; or

(c) purposely or knowingly assist an unqualified applicant in obtaining a resident license.

(2) A license agent may not sell any hunting, fishing, or trapping license to:

(a) an applicant who fails to produce the required identification at the time of application for licensure pursuant to 87-2-106(1) and 87-2-202(1); or

(b) a person who does not present the person's wildlife conservation license at the time of application for the licenses.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 24. Nonresident license or permit offenses. (1) A person who is not a resident may not:

(a) apply for or purchase for a nonresident's use the following resident licenses and permits:

(i) wildlife conservation license;

(ii) hunting license or permit; or

(iii) fishing license or permit;

(b) affirm to or make a false statement to obtain a resident license.

(2) A person convicted of a violation of this section shall be fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 18 months.

Section 25. License, permit, or tag offenses. (1) A person may not apply for, purchase, or possess more than one license, permit, or tag of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under 87-2-104(2) for game management purposes. However, when more than one license, permit, or tag is authorized by the commission, a person may not apply for, purchase, or possess more licenses, permits, or tags than are authorized.

(2) The holder of a replacement license, permit, or tag may not make the replacement license, permit, or tag available for use by another person.

(3) Except as provided in [section 26(2)], a person to whom a license or permit has been issued may not fish, hunt for any game bird or game animal, or attempt to hunt for any fur-bearing animal in this state unless the person is carrying the required license or permit at the time.

(4) A person may not refuse to exhibit a license or permit and the identification used in purchasing a license or permit for inspection to a warden or other officer requesting to see it.

(5) A person may not at any time alter or change a license in any material manner or loan or transfer any license to another person. A person other than the person to whom a license is issued may not use the license. A person may not attach the person's license to a game animal killed by another person.

(6) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 26. Unlawful possession of hunting or fishing license or permit. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of a hunting or fishing license or permit if the person knowingly carries or has physical control over a valid and unused:

(a) hunting license or permit issued to another person while in any location that the species to be hunted may inhabit;

(b) resident hunting license or permit or resident fishing license or permit issued to a nonresident; or

(c) hunting license or permit or fishing license or permit that was issued in violation of applicable law or rule.

(2) The prohibition in subsection (1) does not apply:

(a) to a person who is carrying or has physical control over a license or permit issued to that person's spouse or to any minor when the spouse or minor is hunting with that person; and

(b) when a properly obtained and validated license or permit is attached to a lawfully killed game animal.

(3) Except as provided in subsection (4), a person who violates this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person who violates this section while engaged in a commercial activity, such as taxidermy, meat processing, outfitting, or guiding by carrying or having physical control over three or more hunting licenses that are issued to another person or persons and that are used or intended to be used on game animals not taken by the person or persons to whom the licenses were issued or by knowingly carrying, having physical control of, or selling two or more licenses or permits that were issued in violation of applicable law or rule is guilty of a felony and upon conviction shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and lose the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

Section 27. Hunting, fishing, or trapping while privileges or licenses forfeited or suspended. (1) A person may not hunt, fish, or trap

while the person's license or privilege to hunt, fish, or trap in this state is forfeited for a violation of this title or any other law pertaining to fish and game in this state. A person convicted of a violation of this section may be fined not less than $500 or more than $2,000 and shall be imprisoned in the county detention center for not less than 5 days or more than 6 months.

(2) A person whose privilege to hunt, fish, or trap in this state has been suspended for a violation of fish and game law in a participating state, pursuant to 87-1-803, may not hunt, fish, or trap in this state while that privilege is suspended. A person convicted of a violation of this section shall be fined not less than $500 or more than $2,000 or be imprisoned in the county jail for not more than 60 days, or both.

Section 28. Unlawful procurement of license while privileges forfeited or suspended. (1) A person whose privilege to hunt, fish, or trap in this state is forfeited for a conviction or forfeiture of bail or bond for a violation under [sections 1 through 80] in this state may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit while that privilege is forfeited.

(2) A person whose privilege to hunt, fish, or trap in this state has been suspended for a violation of fish and game law in a participating state, pursuant to 87-1-803, may not apply for or purchase any license to hunt, fish, or trap in this state while that privilege is suspended.

(3) A person convicted of a violation of this section shall be fined not less than $500 or more than $2,000 or be imprisoned in the county jail for not more than 60 days, or both.

Section 29. Failure to surrender license for violation in participating state. A person whose privilege to hunt, fish, or trap in this state has been suspended for a violation of fish and game law in a participating state, pursuant to 87-1-803, and who refuses to surrender any current hunting, fishing, or trapping license as required shall be fined not less than $500 or more than $2,000 or be imprisoned in the county jail for not more than 60 days, or both.

Section 30. Offense of noncompliance in Montana. A person who hunts, fishes, traps, purchases licenses, or refuses to surrender any current hunting, fishing, or trapping license in violation of [section 76] shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 31. Offense of noncompliance in participating state. A person who hunts, fishes, or traps, who applies for or purchases licenses or permits, or who refuses to surrender any current hunting, fishing, or trapping license in violation of 87-1-804 shall be fined not less than $500 or more than $2,000 or be imprisoned in the county jail for not more than 60 days, or both.

Section 32. Unlawful special application or entry. A person convicted of unlawfully applying for or entering a drawing for any special license or permit in violation of [section 75] shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 60 days, or both.

Section 33. Unlawful use of equipment while hunting. (1) A person may not:

(a) hunt or attempt to hunt any game animal or game bird by the aid or with the use of any snare, except as allowed in 87-3-127 and 87-3-128, set gun, projected artificial light, trap, salt lick, or bait;

(b) use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife except predatory animals and those birds not protected by state or federal law;

(c) while hunting, take into a field or forest or have in the person's possession any device or mechanism devised to silence, muffle, or minimize the report of any firearm, whether the device or mechanism is operated from or attached to any firearm;

(d) while hunting, possess any electronic motion-tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this subsection (1)(d).

(e) while hunting, use archery equipment that has been prohibited by rule of the commission;

(f) use a shotgun to hunt deer or elk except with weapon type and loads as specified by the department;

(g) use a rifle to hunt or shoot upland game birds unless the use of rifles is permitted by the department. This does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder.

(h) use a rifle to hunt or shoot wild turkey during the spring wild turkey season.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A person convicted of hunting while using projected artificial light as described in subsection (1)(a) may be subject to the additional penalties provided in [sections 63 and 64].

(4) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 34. Unlawful hunting within city or town. (1) A person may not hunt or attempt to hunt any deer within the boundaries of any incorporated or unincorporated city or town of this state except as allowed under a plan developed by a city or town and approved by the department pursuant to 7-3-1105, 7-3-1222, or 7-31-4110.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or

trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 35. Unlawful hunting from public highway. (1) Except as provided in 87-2-803(4), a person may not hunt or attempt to hunt any game animal or game bird on, from, or across any public highway or the shoulder, berm, or barrow pit right-of-way of any public highway, as defined in 61-1-101, in the state.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 36. Unlawful use of dog while hunting. (1) Except as provided in subsections (3) through (5), a person may not:

(a) chase any game animal or fur-bearing animal with a dog; or

(b) purposely, knowingly, or negligently permit a dog to chase, stalk, pursue, attack, or kill a hooved game animal. If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) Except as provided in subsection (3)(d), a peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing a hooved game animal may destroy that dog on public land or on private land at the request of the landowner without criminal or civil liability.

(3) A person may:

(a) take game birds during the appropriate open season with the aid of a dog;

(b) hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs;

(c) hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs; and

(d) use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (2).

(4) A resident who possesses a Class D-3 resident hound training license may pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year.

(5) Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(6) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not

more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(7) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 37. Unlawful use of vehicle while hunting. (1) Except as provided in 87-2-803(4), a person may not:

(a) hunt or attempt to hunt any game animal or game bird from any self-propelled or drawn vehicle; or

(b) use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife, except predators of this state. This subsection (1)(b) does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(2) Except as provided in 87-2-803(4), a person may not, while hunting a game animal or bird:

(a) drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass a game animal or game bird with the use or aid of a motor-driven vehicle;

(b) use a motor-driven vehicle other than on an established road or trail unless the person has reduced a big game animal to possession and cannot easily retrieve the big game animal. In that case, a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted permission. After the retrieval, the motor-driven vehicle must be returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to a road or trail.

(c) drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail, unless written permission has been given by the landowner and is in possession of the hunter.

(3) The restrictions in subsection (2) on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land and not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

(4) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(5) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 38. Unlawful destruction of evidence of sex. (1) A person who kills a big game animal in this state may not destroy evidence of the sex of the big game animal so as to make the determination of the sex of the big game animal uncertain.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 39. Migratory game bird offenses. A person who violates any provision of 87-3-403 related to migratory game birds shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 40. Tagging of game animal offenses. (1) Each license issued by the department authorizing the holder of the license to hunt game animals, whether issued to a resident or a nonresident, must provide any tags, coupons, or markers as the department prescribes. When a person kills a game animal under the license, the person shall immediately cut out from the tag, coupon, or other marker the date the animal was killed and attach the tag, coupon, or other marker to the animal, completely filled out with the name of the license holder, the license holder's address, and any other information requested on the tag, coupon, or other marker. The tag, coupon, or other marker must be kept attached to the carcass as long as any considerable portion of the carcass remains unconsumed. When a game animal has been lawfully killed and the proper tag, coupon, or other marker is attached to the game animal that was killed, the game animal becomes the property of the person who lawfully killed the animal and may be possessed, used, stored, donated to another or to a charity, or transported.

(2) A person who kills any game animal by authority of any license issued for the killing of the game animal may not fail or neglect to cut out the day and month of the kill or provide any other information that is required and attach the tag, coupon, or other marker provided with the license issued to the carcass of the game animal or portion of the game animal.

(3) A person may not fail to keep the tag, coupon, or other marker attached to the game animal or portion of the game animal while the animal is possessed by the person.

(4) A person may not tag a game animal with a tag restricted to a hunting district other than the hunting district where the game animal was killed.

(5) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 41. Tagging of turkey offenses. (1) A person who kills, captures, or possesses a wild turkey by authority of any turkey tag or permit may not:

(a) fail or neglect to attach the tag to the turkey;

(b) fail to validate the tag by not filling out or punch marking the tag as required; or

(c) fail to keep the tag attached while the turkey is possessed by the person.

(2) A person who takes or kills a turkey must immediately attach to the turkey's leg a valid tag in compliance with instructions on the tag.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 42. Hunting or killing over limit. (1) A person may not attempt to kill, take, shoot, or capture or kill, take, hunt, shoot, or capture more than one game animal of any one species in any 1 license year unless the killing of more than one game animal of that species has been authorized by regulations of the department.

(2) If a person is convicted or forfeits bond or bail after being charged with hunting or killing over the limit of:

(a) mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(b) deer, antelope, elk, or mountain lion, the person shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) fur-bearing animal, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(3) A person convicted of unlawful taking of more than double the legal bag limit as described in this section may be subject to the additional penalties provided in [sections 63 and 64].

(4) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69].

Section 43. Failure to wear hunter orange while big game hunting. (1) Except as provided in subsection (3), a person may not hunt any big game animals in this state or accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without wearing as exterior garments above the waist a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

(2) As used in this section, "hunter orange" means a daylight fluorescent orange color.

(3) This section does not apply to a person hunting with a bow and arrow during the special archery season.

(4) The department shall make rules to implement this section.

(5) A person convicted of a violation of this section shall be punished by a fine of not less than $10 or more than $20.

Section 44. Failure to obtain landowner's permission for hunting. (1) A resident or nonresident shall obtain permission of the landowner, the lessee, or their agents before taking or attempting to take nongame wildlife or predatory animals or hunting on private property.

(2) Except as provided in subsection (3), a person who violates this section shall, upon conviction for a first offense, be fined an amount not to exceed $25.

(3) A person convicted of a violation of this section for hunting a big game animal on private property without obtaining permission of the landowner shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 45. Fishing offenses. (1) Except when specifically authorized by law or by commission rule, a person may not:

(a) fish by any means other than by hook and single line or single rod, in hand or within immediate control. This does not prevent:

(i) fishing from a boat or the shore on a lake or reservoir by hook and two lines or two rods, in hand or within immediate control, in accordance with rules that the commission adopts;

(ii) the snagging of paddlefish, chinook salmon, and kokanee (sockeye salmon) when the commission declares an open season when paddlefish, chinook salmon, and kokanee (sockeye salmon) may be taken by snagging;

(iii) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow under rules and regulations that the commission adopts;

(iv) the use of landing net or gaff to land a game fish after the game fish has been hooked as specified in this subsection (1)(a);

(v) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in waters designated by the commission;

(vi) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River under the rules and regulations that the commission adopts;

(vii) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod; or

(viii) the taking of salmon and lake trout in Fort Peck reservoir by spear or gig from December through March under rules and regulations that the commission adopts.

(b) unlawfully use any fishing rod and line, fishing lines, spear, gig, or barbed fork;

(c) take or catch fish using fishtraps, grabhooks, spears, gigs, or other similar means for catching fish;

(d) use any gun or trap or other device to entrap, catch, capture, or take or to attempt to entrap, catch, capture, or take any game fish;

(e) have in the person's possession or under the person's control a seine, net, or other similar device for capturing fish. A seine or net found in a vehicle, at the camp, or on the premises of a person is prima facie evidence that the seine, net, or similar device belongs to the person or persons occupying the camp or premises. This subsection (1)(e) does not apply to:

(i) a license holder for a private fish pond who is licensed to sell fish and eggs under 87-4-603;

(ii) a person with an unexpired seine or net license;

(iii) the use, by any person, of a landing net in connection with or in addition to a pole, line, and hooks in fishing for game fish; or

(iv) the possession of traps, seines, or nets when found in the vicinity of any waters in which the commission has designated that traps, seines, or nets may be used for the taking of nongame fish or game fish.

(f) take or catch fish with a hook baited with any poisonous substance or using any poisonous substance, including fish berries;

(g) use archery equipment prohibited by rule of the commission to fish; or

(h) use any carbide, lime, giant powder, dynamite, or other explosive compounds or any corrosive or narcotic poison or other deleterious substance or have any of the enumerated items in the person's possession within 100 feet of any stream where fish are found for the purpose of catching, stunning, or killing fish. This subsection (1)(h) does not apply to anyone authorized by the department to conduct lake or stream surveys or to control undesirable or overpopulated species of fish.

(2) The possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is prima facie evidence that the person or persons in whose possession these implements are found were using the implements to fish.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 46. Trapping and snaring offenses. (1) A person may not use a snare trap for the purpose of snaring a fur-bearing animal, a predatory animal, or a nongame species unless:

(a) the snare trap is tagged with a numbered metal device identifying the owner's name, address, and telephone number;

(b) the consent of the landowner has been obtained for a set on private property; and

(c) the snare trap is set in a manner and at a time so that it will not unduly endanger livestock. A person who injures livestock in snare traps is liable for damages to the owner of the livestock.

(2) A person trapping fur-bearing animals, predatory animals, or any other animals shall fasten a metal tag to all traps bearing in legible English the name and address or wildlife conservation license number of the trapper, except that a tag is not required on traps used by landowners trapping on their own land or on an irrigation ditch right-of-way contiguous to the land.

(3) A holder of a Class C-2 trapper's license may not trap or snare predatory animals or nongame wildlife on private property without obtaining written permission from the landowner, the lessee, or their agents.

(4) A person may not at any time willfully destroy, open or leave open, or partially destroy a house of any muskrat or beaver, except that trapping in the house of muskrats is not prohibited when authorized by the commission.

(5) (a) A person may not destroy, disturb, or remove any trap or snare belonging to another person or remove wildlife from a trap or snare belonging to another person without permission of the owner of the trap or snare, except that from March 1 to October 1 of each year a person may remove any snare from land owned or leased by the person if the snare would endanger livestock.

(b) This subsection (5) does not apply to a law enforcement officer acting within the scope of the officer's duty.

(6) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by the state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(7) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 47. Trapping during closed season. (1) A person may not trap or hunt or attempt to trap or hunt any fur-bearing animal until the commission provides an open season on any fur-bearing animal. The furs and hides of fur-bearing animals legally taken during the open season may be possessed, bought, and sold at any time except as provided by law.

(2) When it is shown that muskrats or beaver are causing severe injury to or are a menace to the structures, canal banks, or other works of an irrigation project or district or to a stock water pond, any employee or resident landowner on the project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks, or other works of the project or district or the stock water pond during the closed season on muskrats or beaver after having secured from the director a permit to do so, except that from June 1 to August 31 of each year, a permit is not required.

(3) A person convicted of a violation of this section shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(4) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 48. Waste of fur-bearing animal. (1) A person may not waste a fur-bearing animal by purposely or knowingly:

(a) failing to pick up traps or snares at the end of the trapping season so that the pelt of a fur-bearing animal is wasted;

(b) attending traps or snares so that fur-bearing animals are wasted; or

(c) wasting the pelt of any fur-bearing animal.

(2) The department shall enforce the provisions of this section.

(3) The following are exempt from this section:

(a) federal, state, and county predator control programs; and

(b) pelts of muskrat and beaver killed pursuant to [section 47(2)].

(4) As used in this section, "pelt" means the pelt, skin, or fur of a fur-bearing animal.

(5) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, a person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 49. Failure to report or tattoo. (1) Any bear, wolf, tiger, mountain lion, or coyote that is captured alive to be released later or that is held in captivity for any purpose must be reported to the department within 3 days of the capture or commencement of captivity.

(2) Each animal reported as required in subsection (1) must be permanently tattooed or otherwise permanently identified in a manner that will provide positive individual identification of the animal. No tattoo is required if the animal is subject to a permanent, individual identification process by another state or federal agency.

(3) Any person holding a bear, wolf, tiger, mountain lion, or coyote in captivity shall immediately report to the department any death, escape, release, transfer of custody, or other disposition of the animal.

(4) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 50. Outfitting without a license. (1) (a) A person may not purposely or knowingly engage in outfitting while not licensed pursuant to Title 37, chapter 47, or purposely or knowingly violate a licensing rule adopted under Title 37, chapter 47.

(b) A person convicted of a violation of subsection (1)(a) is punishable by a fine of not less than $200 or more than $1,000 or imprisonment in the county jail for up to 1 year, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(2) (a) A person or entity that represents to any other person, any entity, or the public that the person or entity is an outfitter and who commits the offense of outfitting without a license, as described in subsection (1)(a), for any portion of 5 or more days for consideration within 1 calendar year for any person or for consideration valued in excess of $5,000 is punishable by a fine of not more than $50,000 or imprisonment in the state prison for up to 5 years, or both.

(b) A person convicted of a violation of subsection (2)(a) shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a minimum of 5 years. A sentencing court that imposes a period of license revocation shall consider the provisions of subsection (3).

(3) A sentencing court that imposes a period of license revocation pursuant to subsection (1)(b) or (2)(b) shall consider and may impose any of the following conditions during the period of revocation:

(a) prohibiting the offender from:

(i) participating in any hunting, fishing, or trapping endeavor as a hunter, angler, trapper, scout, guide, observer, or assistant;

(ii) brokering or participating in any lease of property for hunting, fishing, or trapping, either personally or through an agent or representative;

(iii) participating in any seminar or show that is designed to promote hunting, fishing, or trapping;

(iv) purchasing or possessing any hunting, fishing, or trapping permits; and

(b) imposing any other reasonable condition or restriction that is related to the crime committed or that is considered necessary for the rehabilitation of the offender or for the protection of the citizens or wildlife of this state.

(4) A person convicted of a violation of this section shall reimburse the full amount of any fees received to the person to whom illegal outfitting services were provided.

(5) As used in this section, the following definitions apply:

(a) "Consideration" means remuneration given in exchange for outfitting services supplied based on a business relationship between parties, but not including reimbursement for shared trip expenses.

(b) (i) "Outfitting" means providing hunting or fishing services for consideration, including any saddle or pack animal, facilities, camping equipment, personal service, or vehicle, watercraft, or other conveyance for any person to hunt, fish, trap, capture, take, kill, or pursue any game, including fish. The term includes accompanying that person, either part or all of the way, on an expedition for any of these purposes or supervision of a licensed guide or professional guide in accompanying that person.

(ii) The term does not include the provision of the services listed in subsection (5)(b)(i) by a person on real property that the person owns for the primary pursuit of bona fide agricultural interests.

Section 51. Taxidermist offenses. (1) A person convicted of a violation of 87-4-201 related to the licensing and recordkeeping of taxidermists shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(2) In addition to the penalties in subsection (1), the taxidermist's license of the person convicted may be revoked by the court.

Section 52. Fur dealer offenses. A person convicted of a violation of 87-4-302 or 87-4-303 related to the licensing and recordkeeping of a fur dealer shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by the state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 53. Alternative livestock ranch offenses. (1) A person may not purposely or knowingly violate any provision of or rule adopted pursuant to Title 87, chapter 4, part 4, pertaining to the licensure or operation of an alternative livestock ranch.

(2) In addition to license revocation or other penalties allowed by 87-4-427, a person who purposely or knowingly violates this section shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 1 year, or both.

(3) Any violation of [section 12] regarding the sale of an animal in connection with an alternative livestock ranch is subject to prosecution and penalties under that section.

Section 54. Shooting preserve offenses. (1) A person may not:

(a) hunt on a shooting preserve without obtaining a license pursuant to 87-4-504; or

(b) harvest game on a shooting preserve without tagging the game pursuant to 87-4-525.

(2) Each shooting preserve operator shall keep records in accordance with 87-4-526.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 55. Unlawful sale of fish or spawn. (1) Except as provided in 87-4-601 and subsections (2) and (3) of this section, a person may not, for speculative purposes, for market, or for sale, catch game fish or remove or cause to be removed the eggs or spawn of any game fish in any way. A person may not sell or offer for sale game fish or the eggs or spawn from game fish.

(2) The restrictions of subsection (1) do not apply to the:

(a) catching of fish or the collecting of eggs or spawn in a private fish pond licensed under 87-4-603 by the owner of the pond;

(b) taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for use in a private fish pond licensed under 87-4-603;

(c) catching of whitefish by the holder of a valid fishing license fishing with hook and line or a rod in specified waters designated by rules of the commission;

(d) taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River under rules of the commission; or

(e) sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) A person may possess and sell legally taken nongame fish as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609.

(4) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 56. Unlawful taking of fish or aquatic organism. (1) A person may not take fish or aquatic organisms for commercial purposes without obtaining a permit from the department pursuant to 87-4-609.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 57. Unlawful taking of crayfish. (1) A person may not take crayfish from the waters of the state, except from private fish ponds regulated under 87-4-603 or as provided in subsection (2) of this section, for sale or commercial distribution.

(2) A person may take crayfish from the waters of the state for sale or commercial distribution as fishing bait under rules adopted by the department under 87-4-609.

(3) A person convicted of a violation of this section may be fined not less than $50 or more than $500 or may be imprisoned in the county jail for not more than 6 months, or both.

Section 58. Menagerie and zoo offenses. (1) A person may not:

(a) operate a roadside menagerie or wild animal menagerie without a permit obtained pursuant to 87-4-803;

(b) subscribe to any false statement in an application for a permit; or

(c) obtain wild animals for a roadside menagerie, wild animal menagerie, or zoo by capture from the wild or by purchase except in accordance with 87-4-804.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 59. Owning, controlling, or propagating game birds without license. A person who owns, controls, or propagates game birds in violation of Title 87, chapter 4, part 9, shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 60. Owning, controlling, or propagating furbearers without license. A person who owns, controls, or propagates furbearers in violation of 87-4-1002 shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

Section 61. Unlawful acquisition of furbearer. (1) A person may not capture, take, or otherwise acquire a furbearer from the wild for use on a fur farm.

(2) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 62. Wild bird, raptor, and falcon offenses. (1) A person who violates any provision of Title 87, chapter 5, part 2, pertaining to the regulation of wild birds, raptors, and falconry, shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(2) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 and 68].

Section 63. Second offense penalties. (1) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (2):

(a) hunting during a closed season;

(b) taking an animal or hunting while using projected artificial light;

(c) hunting without a license;

(d) unlawful taking of more than double the legal bag limit;

(e) unlawful possession of more than double the legal bag limit; and

(f) waste of game by abandonment in the field.

(2) A person convicted of the offenses in subsection (1) in the time periods specified in subsection (1) shall be fined not less than $2,000 or more than $5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture unless the court imposes a longer period.

Section 64. Third offense penalties. (1) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (2):

(a) hunting during a closed season;

(b) taking an animal or hunting while using projected artificial light;

(c) hunting without a license; and

(d) unlawful taking of more than double the legal bag limit.

(2) A person convicted of the offenses in subsection (1) in the time period specified in subsection (1) shall be fined not less than $5,000 or more than $10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for life.

Section 65. Additional penalty for use of artificial light or scope. (1) If a person is convicted of illegally taking an animal described in [section 68 or 69] through the use of projected artificial light, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.

(2) A person convicted of taking an animal while using projected artificial light as described in this section may be subject to the additional penalties provided in [sections 63 and 64].

Section 66. Different penalty for unlawful attempt to hunt or trap. A person convicted of unlawfully attempting to hunt or trap a game animal shall be fined not less than $200 or more than $600 or be imprisoned in the county detention center for not more than 60 days, or both.

Section 67. Finding required for restitution. Before restitution may be ordered pursuant to [section 68 or 69], the finder of fact at trial or the court upon entry of a guilty or nolo contendere plea shall find that the illegal killing or possession was done knowingly or purposely as defined in 45-2-101. This finding is not required for state reimbursement under [section 68] when bond or bail is forfeited.

Section 68. Restitution for illegal killing or possession of certain wildlife. (1) Except as provided in [section 69] and in addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

(a) mountain sheep and endangered species, $2,000;

(b) elk, caribou, bald eagle, black bear, wolf, and moose, $1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, $300;

(e) fur-bearing animals that are not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section.

Section 69. Restitution for illegal killing or possession of trophy wildlife. In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of purposely or knowingly illegally killing, taking, or possessing a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

(1) mountain sheep with at least one horn equal to or greater than a three-fourth curl as defined by commission regulation, $30,000;

(2) elk with at least six points on one antler, as defined by commission regulation, or any grizzly bear, $8,000;

(3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, $6,000;

(4) antlered deer with at least four points on one antler as defined by commission regulation, $8,000;

(5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, $2,000.

Section 70. Payment — penalty for nonpayment of restitution. (1) In each case of conviction, the court before which the conviction is obtained shall order payment of the sum stated in [section 68 or 69].

(2) Failure to make payment in the time and manner prescribed by the court constitutes civil contempt of court and is punishable as provided in Title 3, chapter 1, part 5.

Section 71. Disposition of proceeds from restitution. All money collected by a court pursuant to [sections 67 through 70] must be remitted to the department of revenue for deposit in the state special revenue fund account to the credit of the department for hunter education purposes or for enforcement.

Section 72. Remedial hunter education program — sentencing. (1) The court may sentence a person who is convicted of a hunting violation that results in a mandatory forfeiture of hunting privileges or who is convicted of a hunting violation to complete a remedial hunter education course.

(2) A person who is sentenced by the court to complete a remedial hunter education course shall successfully complete the course before any license privileges may be restored.

(3) The department may not issue a hunting, fishing, or trapping license to a person who is convicted of a hunting violation that results in a mandatory forfeiture of hunting privileges until the person has successfully completed the remedial hunter education course.

(4) If the person who is sentenced by the court to complete the remedial hunter education course is not a resident of the state of Montana, the sentencing court shall require the person to complete a similar remedial hunter education course in the person's state of residence. If a similar course does not exist in the person's state of residence, the person shall complete Montana's course before any Montana hunting, fishing, or trapping license may be issued.

(5) This section does not allow the issuance of any licenses to a person whose hunting or fishing privileges have been revoked for life.

Section 73. Costs of imprisonment. Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to [sections 1 through 80] to pay the costs of imprisonment under [sections 1 through 80].

Section 74. Privileges of juveniles. A mandatory forfeiture of privileges imposed pursuant to [sections 1 through 80] does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's current hunting, fishing, or trapping licenses issued by this state and the juvenile's privilege to hunt, fish, or trap in this state upon conviction or forfeiture of bond or bail for a violation of this title.

Section 75. Restriction on special application or entry when ordered to pay restitution. A person convicted or who has forfeited bond or bail under this title and who has been ordered to pay restitution under the provisions of [section 68 or 69] may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a mountain sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period.

Section 76. Suspension of privileges for failure to comply with citation, sentence, or administrative suspension. (1) A person who fails to comply with the terms of a court citation or the terms of an administrative suspension or who fails to fulfill the obligations of any court-imposed sentence for a wildlife violation under this title, resulting in the issuance of a warrant for the person's arrest, shall forfeit any current hunting, fishing, or trapping license issued by this state to the department, and the person's privilege to hunt, fish, or trap in this state is suspended until the terms of the court citation or sentence are satisfied.

(2) A person who loses the person's privileges under this section must be notified by the department or by the administrative authority in person or by mail.

Section 77. Forfeiture of license or permit for littering. A holder of a Montana resident or nonresident fishing or hunting license or camping permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing, or camping shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, camp, or trap in this state for a period of 1 year from the date of conviction.

Section 78. Revocation of exception. If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by 87-2-801 through 87-2-803 must be revoked for not less than 6 months.

Section 79. Notification of loss of privileges — reinstatement and revocation. (1) If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) After a forfeiture period imposed pursuant to [sections 1 through 80] and upon receipt of notification from the court that the defendant has appeared and all terms of the court sentence, including making payment of any fine, costs, or restitution, have been met or that the defendant is in compliance with installment payments specified by the court, the department shall reinstate the privileges unless the person is not otherwise entitled to reinstatement. After the privileges are reinstated, the department may revoke the privileges if it is notified by the clerk of court that the person is in default on any installment payment.

Section 80. Suspension by administrative authority — notice and surrender of license or permit. If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

Section 81. Penalties. A person who violates this part is subject to the penalties provided in [section 54].

Section 82. Section 45-6-101, MCA, is amended to read:

"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if the person knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened that the person has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $1,500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $1,500, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss.

(5) A person convicted of or who forfeits bond or bail for committing an act of criminal mischief involving property owned or administered by the department of fish, wildlife, and parks ~~is subject to an additional penalty as provided in 87-1-102(2)(c)~~ *shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for at least 24 months from the date of conviction or forfeiture*."

Section 83. Section 45-6-203, MCA, is amended to read:

"45-6-203. Criminal trespass to property. (1) Except as provided in 15-7-139, 70-16-111, and 76-13-116, a person commits the offense of criminal trespass to property if the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) A person convicted of or who forfeits bond or bail for committing an act of criminal trespass involving property owned or administered by the department of fish, wildlife, and parks or while hunting, fishing, or trapping ~~is subject to an additional penalty as provided in 87-1-102(2)(f)~~ *may be subject to revocation of the person's privilege to hunt, fish, or trap in this state for up to 24 months from the date of conviction or forfeiture*."

Section 84. Section 81-2-121, MCA, is amended to read:

"81-2-121. Taking of publicly owned wild buffalo or bison that are present on private property — notice — supplemental feeding — penalty. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability on a landowner or the agent of a landowner for the taking of a publicly owned wild buffalo or bison that is suspected of carrying disease and that is present on the landowner's private property and is potentially associating with or otherwise threatening the landowner's livestock if *the landowner or agent*:

(a) ~~the landowner or agent~~ notifies or makes a good faith effort to notify the department in order to allow as much time as practicable for the department to first take or remove the publicly owned wild buffalo or bison that is present on the landowner's property;

(b) ~~the landowner or agent~~ makes a good faith effort to notify the department that a taking has occurred and to retain all parts for disposal by the department; and

(c) ~~the landowner or agent~~ is not in violation of subsection (2)*(a)*.

(2) *(a)* A person may not intentionally provide supplemental feed to game animals in a manner that results in artificial concentration of game animals that may potentially contribute to the transmission of disease. A person who violates this subsection ~~is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1)~~ *(2)(a) shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, a person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands,*

as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) This subsection *(2)* does not apply to supplemental feeding activities conducted by the department for disease control purposes."

Section 85. Section 87-1-120, MCA, is amended to read:

"87-1-120. Remedial hunter education program. (1) The department shall develop a remedial hunter education program for hunting law violators.

(2) The program must be funded through money collected by a court pursuant to ~~87-1-111 through 87-1-113~~ *[sections 67 through 70]*.

(3) The department shall determine the qualifications for instructors, hire the instructors, and pay the instructors at a rate determined by the department.

(4) A person who is sentenced by the court to complete a remedial hunter education course shall pay the costs directly attributable to the person's participation in the remedial hunter education program.

(5) The course instructor shall notify the sentencing court of the participant's attendance record and of the participant's success or failure in completing the program.

(6) A participant whose hunting, fishing, or trapping license has been revoked shall successfully complete the program before license privileges may be reinstated."

Section 86. Section 87-1-232, MCA, is amended to read:

"87-1-232. Tattoo records. (1) The department shall maintain a record of each animal reported to it pursuant to ~~87-1-231~~ *[section 49]*. The record shall indicate:

(a) the person by whom the animal was captured or is held in captivity;

(b) the location of the capture or captivity;

(c) the date the animal was tattooed;

(d) the purpose of the captivity or capture; and

(e) any death, escape, release, transfer of custody, or other disposition of ~~such~~ *the* animal.

(2) The department shall establish by rule a fee to be charged, which may not exceed the administrative cost of maintaining the record required by this section."

Section 87. Section 87-1-234, MCA, is amended to read:

"87-1-234. Exceptions to tattoo and compensation requirements. Sections ~~87-1-231 through~~ *87-1-232,* 87-1-233*, and [section 49]* do not apply to those animals:

(1) captured and released as part of an ongoing game management program or an ongoing predator control program unless ~~such~~ *the* animals have been involved in livestock killing; or

(2) captured and released as part of a scientific, educational, or research program as certified by the department."

Section 88. Section 87-1-601, MCA, is amended to read:

"87-1-601. (Temporary) Use of fish and game money. (1) (a) Except as provided in subsections (7) and (9), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source

must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621 and section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines *imposed* pursuant to ~~87-1-102~~ *[sections 1 through 80]*.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs.

87-1-601. (Effective March 1, 2011) Use of fish and game money. (1) (a) Except as provided in 87-1-290 and subsections (7) and (9) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title

87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621 and section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines *imposed* pursuant to ~~87-1-102~~ *[sections 1 through 80]*.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

Section 89. Section 87-1-803, MCA, is amended to read:

"87-1-803. Reciprocal recognition of license suspensions — suspension of privileges for conviction in participating state. (1) When the department receives notice of the suspension of a person's hunting, trapping, or fishing privileges by a participating state, the department shall determine whether the violation leading to the suspension could have led to the forfeiture of privileges under Montana law. If the department determines that the person's privileges could have been forfeited, the department shall suspend the person's privileges to hunt, trap, or fish in Montana for the same period as imposed by the participating state or for the minimum period that would have been imposed under Montana law, whichever period is longer.

(2) When the department receives notice of a conviction of a Montana resident from the licensing authority of the issuing state, the department shall treat the conviction as if it had occurred in Montana and shall determine whether the conviction could have led to the forfeiture of the resident's hunting, trapping, or fishing privileges under Montana law. If the department determines that the resident's privileges could have been forfeited, the department shall suspend the resident's privileges to hunt, trap, or fish in Montana for the minimum period that would have been imposed under Montana law.

(3) Notice of the suspension must be sent to the person, who shall surrender any current Montana hunting, trapping, and fishing licenses to the department within 10 days.

~~(4) A person whose privileges have been suspended and who hunts, traps, or fishes in Montana, who applies for or purchases any licenses or permits to hunt, trap, or fish in Montana, or who refuses to surrender any current hunting, trapping, and fishing licenses as required is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102(4).~~"

Section 90. Section 87-1-804, MCA, is amended to read:

"87-1-804. Suspension of privileges for failure to comply with citation issued in participating state. (1) The department shall suspend the hunting, trapping, or fishing privileges of any resident of Montana upon notification from the licensing authority of an issuing state that the resident has failed to comply with the terms of a citation issued for a wildlife violation. The suspension remains in effect until the department receives satisfactory evidence of compliance from the issuing state.

(2) Notice of the suspension must be sent to the resident, who shall surrender all current Montana hunting, trapping, and fishing licenses to the department within 10 days.

~~(3) A person who hunts, traps, or fishes, who applies for or purchases licenses or permits, or who refuses to surrender any current hunting, trapping, or fishing license in violation of this section is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102(4).~~"

Section 91. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in ~~87-1-102,~~ chapter 3~~,~~ and this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means to take or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(2) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

~~(3) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.~~

~~(4) "Commission" means the state fish, wildlife, and parks commission.~~

~~(5)~~*(3)* "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

~~(6)~~*(4)* "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

~~(7)~~*(5)* "Game fish" means all species of the family ~~salmonidae~~ *Salmonidae* (chars, trout, salmon, grayling, and whitefish); all species of the genus ~~stizostedion~~ *Stizostedion* (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus ~~esox~~ *Esox* (northern pike, pickerel, and muskellunge); all species of the genus ~~micropterus~~ *Micropterus* (bass); all species of the genus ~~polyodon~~ *Polyodon* (paddlefish); all species of the family ~~acipenseridae~~ *Acipenseridae* (sturgeon); all species of the genus ~~lota~~ *Lota* (burbot or ling); the species ~~perca~~ *Perca* flavescens (yellow perch); all species of the genus ~~pomoxis~~ *Pomoxis* (crappie); and the species ~~ictalurus~~ *Ictalurus* punctatus (channel catfish).

~~(8)~~*(6)* "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

~~(9)~~*(7)* "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; ~~wilson's~~ *Wilson's* snipes or jacksnipes; and mourning doves.

~~(10)~~*(8)* "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

~~(11)~~*(9)* "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

~~(12)~~*(10)* "Person" means individuals, associations, partnerships, and corporations.

~~(13)~~*(11)* "Predatory animals" means coyote, weasel, skunk, and civet cat.

~~(14)~~*(12)* "Trap" means to take or participate in the taking of any wildlife protected by the laws of the state by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

~~(15)~~*(13)* "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

~~(16)~~*(14)* "Wild buffalo" means buffalo or bison that have not been reduced to captivity."

Section 92. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses, permits, or tags allowed — fees. ~~(1) It is unlawful for a person to apply for, purchase, or possess more than one license, permit, or tag of any one class or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 or Class B-5 licenses or to licenses issued under subsection (4) for game management purposes. However, when more than one license, permit, or tag is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses, permits, or tags than are authorized.~~

~~(2) It is unlawful for the holder of a replacement license, permit, or tag to make the replacement license, permit, or tag available for use by another person.~~

~~(3)~~*(1)* The department may prescribe rules and regulations for the issuance or sale of a replacement license, permit, or tag if the original license, permit, or tag is lost, stolen, or destroyed upon payment of a fee not to exceed $5.

~~(4)~~*(2)* When authorized by the commission for game management purposes, the department may:

(a) issue more than one Class A-3 resident deer A, Class A-4 resident deer B, Class B-7 nonresident deer A, Class B-8 nonresident deer B, or special antelope license to an applicant; and

(b) issue a special antlerless moose license, a special cow or calf bison license, or one or more special adult ewe mountain sheep licenses to an applicant.

~~(5)~~*(3)* For all of the game management licenses issued under subsection ~~(4)~~ *(2)*, the commission shall determine the hunting districts or portions of hunting districts for which the licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

~~(6)~~*(4)* When authorized by the commission for game management purposes, the department may issue Class A-9 resident antlerless elk B tag licenses and Class B-12 nonresident antlerless elk B tag licenses entitling the holder to take an antlerless elk. Unless otherwise reduced pursuant to subsection ~~(7)~~ *(5)*, the fee for a Class B-12 license is $273. The commission shall determine the hunting districts or portions of hunting districts for which Class A-9 and Class B-12 licenses are to be issued, the number of licenses to be issued, and all terms and conditions for the use of the licenses.

~~(7)~~*(5)* The fee for a resident or nonresident license of any class issued under subsection ~~(4)~~ *(2)* or ~~(6)~~ *(4)* may be reduced annually by the department."

Section 93. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license ~~— penalties for violation — forfeiture of privileges~~. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, tribal identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to

purchase a license. ~~It is a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure.~~ Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

~~(6) It is unlawful to subscribe to or make any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.~~

~~(7)~~*(6)* A person whose privilege to hunt, fish, or trap has been revoked is not eligible to purchase any license until all terms of the court sentence in which the privilege was revoked, including making restitution, have been met or the person is in compliance with installment payments specified by the court and the department has received notification from the sentencing court to that effect pursuant to ~~87-1-102(1)~~ *[section 79(2)]*.

~~(8) It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:~~

~~(a) wildlife conservation license;~~

~~(b) hunting license or permit; or~~

~~(c) fishing license or permit.~~

~~(9) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection (8) shall be:~~

~~(i) fined not less than the greater of $100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than $1,000;~~

~~(ii) imprisoned in the county jail for not more than 6 months; or~~

~~(iii) both fined and imprisoned.~~

~~(b) In addition to the penalties specified in subsection (9)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.~~

~~(10) It is a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.~~

[~~(11)~~*(7)* The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of

public health and human services for use in administering Title IV-D of the Social Security Act.]

~~(12)~~*(8)* The department shall delete an applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001.)"

Section 94. Section 87-2-202, MCA, is amended to read:

"87-2-202. (Temporary) Application — fee — expiration. (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-803(12). ~~It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.~~

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268, an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001. The $2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

87-2-202. (Effective March 1, 2011) Application — fee — expiration. (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-803(12). ~~It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.~~

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when

the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001. The $2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)"

Section 95. Section 87-2-411, MCA, is amended to read:

"87-2-411. ~~License required to hunt migratory~~ *Migratory* game ~~birds~~ *bird licenses* — fees — disposition of proceeds. (1) ~~A person 16 years of age or older may not hunt migratory game birds without first having obtained a valid migratory bird license from the department.~~ The fee for a resident to purchase the *migratory game bird* license is $6.50. The fee for a nonresident to purchase the *migratory game bird* license is $50.

(2) Money received from the sale of migratory game bird licenses must be deposited in an account in the state special revenue fund for the use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana."

Section 96. Section 87-2-521, MCA, is amended to read:

"87-2-521. Class D-3—resident hound training license. A person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $5, may receive a Class D-3 hound training license that entitles the holder to use a dog or dogs to aid in pursuing mountain lions or bobcats during the training season established in ~~87-3-124(3)(c)~~ *[section 36(4)]*."

Section 97. Section 87-2-807, MCA, is amended to read:

"87-2-807. Taking migratory game birds for propagation — avicultural permit. (1) The department may issue avicultural permits for taking, capturing, and possessing migratory game birds, as defined in 87-2-101~~(9)~~, for the purpose of propagation. Before issuing an avicultural permit, the department shall determine that the applicant has been issued the appropriate federal permit or that the applicant will receive the appropriate federal permit subject to concurrence by the department.

(2) An avicultural permit issued under this section must specify:

(a) the species of migratory game birds allowed to be taken under the permit;

(b) whether eggs or hatched birds, or both, may be taken;

(c) the number of eggs or hatched birds, or both, that may be taken;

(d) areas in which collection may be made;

(e) means by which collection may be made;

(f) the time period for which the permit is valid; and

(g) any other conditions imposed by the department under rules adopted pursuant to subsection (5).

(3) Hatched migratory game birds or their eggs taken under an avicultural permit issued in accordance with this section remain the property of the state and may be disposed of only with the permission of the department. Progeny of hatched migratory game birds taken under permit as provided in this section become the private property of the holder of the permit who propagates the migratory game birds, and the owner may sell or transfer the birds as private property, subject to any applicable state or federal law or regulation.

(4) The department may charge a fee for issuing an avicultural permit, if necessary, not to exceed the cost of issuing the permit.

(5) The department shall adopt rules implementing this section."

Section 98. Section 87-3-110, MCA, is amended to read:

"87-3-110. ~~Registration for sale of~~ *Regulation of* certain grizzly bears *and grizzly bear parts.* (1) A person in possession of a lawfully killed grizzly bear or a hide, head, or mount ~~thereof~~ *of a lawfully killed grizzly bear* may sell it if it has been registered with the department in the manner and upon forms provided by the department. The registration form must specifically describe the grizzly bear or the hide, head, or mount thereof and must accompany it upon any sale.

(2) Bears or parts ~~thereof~~ *of bears* may be registered as follows:

(a) Before January 1, 1986, any lawfully killed grizzly bear or part ~~thereof~~ *of the bear* may be registered.

(b) On or after January 1, 1986, bears lawfully killed in Montana may be registered within 10 days after the date of kill, and bears lawfully killed outside Montana may be registered within 3 months after the date of kill upon presentation of proof of lawful kill.

(3) Registration under this section does not legalize any prior illegal act, such as the unlawful killing or theft of a grizzly bear or part ~~thereof~~ *of the bear*.

(4) A person who is responsible for the death of a grizzly bear shall deliver all parts of the grizzly bear required by department or commission regulation for scientific purposes to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the person any bone structure and skull within 1 year upon written request. The hide must be returned immediately."

Section 99. Section 87-3-121, MCA, is amended to read:

"87-3-121. ~~Conditions for award of prizes~~ *Regulation of contests.* ~~(1) It shall be unlawful for any person, firm, corporation, association, or club to offer or give any prize, gift, or anything of value in connection with or as a bag limit prize for the taking, capturing, killing, or in any manner acquiring any game, fowl, fur-bearing animals, or any bird or animal now or that shall be hereafter protected in any way by the fish and game laws of the state of Montana.~~

~~(2)~~ The commission shall adopt rules to regulate contests*, in accordance with provisions of [section 15],* by a person, firm, ~~corporation, association,~~ or club that intends to offer or give a prize, gift, or anything of value in connection with or as a prize for the taking, capturing, killing, or in any manner acquiring fish that are protected under Title 87. The commission's rules must be based on the commission's duty under Title 87 to protect, preserve, and propagate fish in the state.

~~(3) This section shall not be construed to prohibit the award of prizes for any one game bird or fur-bearing animal on the basis of size, quality, or rarity.~~"

Section 100. Section 87-3-126, MCA, is amended to read:

"87-3-126. ~~Restrictions on use~~ *Use* of aircraft or ~~boats~~ *helicopter* — ~~exception —~~ authority to issue permits and adopt rules. ~~(1) (a) A game bird or game or fur-bearing animal may not be killed, taken, or shot at from any aircraft, including helicopters.~~

~~(b) An aircraft or helicopter may not be used for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game or migratory birds or game or fur-bearing animals.~~

~~(c) A powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail may not be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game birds or game or fur-bearing animals.~~

~~(2) It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any game or fur-bearing animals and communicate the location of the game or fur-bearing animals to any person on the ground by means of any air-to-ground communication signal or other device as an aid to hunting or pursuing wildlife.~~

~~(3) Within the boundaries of a national forest, except as permitted by the department, it is unlawful to use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports that have been established on private property or that have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies. The provisions of this subsection do not apply:~~

~~(a) during emergency situations;~~

~~(b) when search and rescue operations are being conducted; or~~

~~(c) for predator control as permitted by the department of livestock.~~

~~(4)~~ An aircraft or helicopter may be used for the purpose of herding, driving, or hazing wild animals damaging private property or crops on the property in question pursuant to a permit issued by the department. The commission shall adopt rules for the issuance of the permit. The permit may be conditioned to address individual circumstances of each application for a permit. The department may not issue permits during any legal hunting season for the species for which a permit was requested. The permitting program must comply with requirements of federal law for ~~such~~ *the* activity."

Section 101. Section 87-3-204, MCA, is amended to read:

"87-3-204. ~~Restrictions on fishing methods — allowed fishing methods~~ *Designation of state waters for particular fishing methods.* ~~(1) A game fish may not be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any gun, trap, or other device to entrap game fish be used, made, or set.~~

~~(2) Except when specifically authorized by law or commission rule, a person may not:~~

~~(a) take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand or within immediate control;~~

~~(b) take or catch fish with hook baited with any poisonous substance or using any poisonous substance, including fish berries; or~~

~~(c) take or catch fish using fishtraps, grabhooks, seines, nets, spears, gigs, or other similar means for catching fish.~~

~~(3)~~*(1)* (a) The commission may designate waters within the state in which rubber or spring-propelled spears employed by persons swimming or submerged in the water or traps, seines, nets, spears, or gigs may be used for taking:

(i) nongame fish; or

(ii) walleyed pike, sauger, northern pike, burbot (ling), and whitefish.

(b) The commission may adopt rules for the taking of fish under this subsection ~~(3)~~ *(1)*, and the rules may be specific to the water designated. The designated waters may be closed at the discretion of the commission.

(c) Except when the taking of game fish is authorized pursuant to subsection ~~(3)(a)(ii)~~ *(1)(a)(ii)*, all game fish captured while fishing as authorized under this subsection ~~(3)~~ *(1)* must be returned uninjured to the waters from which they were taken.

~~(4)~~*(2)* The commission may designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines that may be used as setlines.

~~(5) Game fish must be taken only by hook and single line or single rod in hand or within immediate control. This does not prevent, however:~~

~~(a) the snagging of paddlefish, chinook salmon, and kokanee (sockeye salmon) when the commission declares an open season when paddlefish, chinook salmon, and kokanee (sockeye salmon) may be taken by snagging;~~

~~(b) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under rules and regulations that the commission prescribes;~~

~~(c) the taking of game fish pursuant to subsection (3);~~

~~(d) the use of landing net or gaff to land a game fish after the game fish has been hooked as specified in this subsection (5);~~

~~(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in waters designated by the commission;~~

~~(f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under the rules and regulations that the commission prescribes;~~

~~(g) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod; or~~

~~(h) the taking of salmon and lake trout in Fort Peck reservoir by spear or gig from December through March, under rules and regulations prescribed by the commission.~~

~~(6)~~*(3)* The commission may designate waters where authorized commercial fishing operators may use approved nets, seines, and traps to fish for designated species of nongame fish."

Section 102. Section 87-3-221, MCA, is amended to read:

"87-3-221. Importation of salmonid fish or eggs unlawful — exception — certification — permit. (1) It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless the importations are shipped direct from the source to destination and a written certification that the source is free of all fish pathogens specified by the department as posing a threat to existing fisheries accompanies the shipment. Certification must be made by a fish pathologist approved by the director.

Certification of the source may be by inspection conducted annually or at other times that the director may order.

(2) In addition to the certification required in subsection (1), all importations of live salmonid fish or eggs must be accompanied by a permit issued by the department. The department shall issue an import permit upon application to the department showing that the proposed importations do not present a substantial threat to the health of state fisheries. The department may condition the permit as necessary to protect fisheries from the introduction and spread of pathogens. Import permits apply to all importations from specified and certified species and sources by a permittee until January 31 of the year succeeding the year of issuance, when the permit expires. However, a separate permit is required for importations by a permittee for species or from sources unspecified in the permittee's other permit or permits. ~~It is unlawful to import live salmonid fish or eggs into Montana without first obtaining the permit required by this subsection or to violate any conditions of the permit.~~"

Section 103. Section 87-3-222, MCA, is amended to read:

"87-3-222. When certification unnecessary. (1) Nothing in 87-3-221 through 87-3-224 or ~~87-3-209~~ *[section 20(1)(b)]* may restrict the importation and transportation of dead salmonid fish or eggs when the fish or eggs have been processed or prepared in a manner that kills those fish pathogens specified by the department as posing a threat to fisheries.

(2) Dead salmonid fish or eggs transported into Montana for processing or caught wild are exempt from the requirement for certification. However, it is unlawful to discard, place, or allow uncertified salmonid fish, parts, or eggs that have been transported into Montana to enter into surface waters other than sewage or disposal systems."

Section 104. Section 87-3-224, MCA, is amended to read:

"87-3-224. Enforcement. The cargo and vehicle involved in a violation of ~~87-3-209~~ *[section 20(1)(b)]* and 87-3-210 or 87-3-221 through 87-3-223 may, at the option of the department, either be denied the right to proceed further within the state of Montana or be quarantined until inspected by a designated biologist from the department. The department shall inform the department of transportation of the provisions regarding importation of salmonid and nonsalmonid fish and eggs so that the department of transportation may enforce the provisions at ports of entry and checking stations under 60-2-303."

Section 105. Section 87-3-403, MCA, is amended to read:

"87-3-403. Migratory game birds — closed season and bag limits. Laws relating to migratory birds are prescribed by the regulations of the United States department of interior and the fish and wildlife service. Open season, bag limit, and other rules and regulations are announced each year by proclamation by the president of the United States. After each proclamation, the department by proper action will adopt, advertise, and enforce ~~such~~ *any* proclaimed regulations as may be applicable to the state of Montana. ~~Any~~ *A* person ~~or persons violating any provisions~~ *who violates a provision* of this section ~~shall be guilty of a misdemeanor and on conviction thereof shall be punished as provided by law~~ *is subject to the provisions of [section 39]*."

Section 106. Section 87-4-201, MCA, is amended to read:

"87-4-201. Regulation of taxidermists. (1) As used in this section, "taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(2) Before conducting the business of a taxidermist, a taxidermist shall obtain from the department a taxidermist's license and pay an annual license fee of $50.

(3) A taxidermist shall keep a written record of all the articles of wildlife in the taxidermist's possession or control, including the following information:

(a) the kind and number of each article of wildlife;

(b) the name and residence of the owner of the article of wildlife; and

(c) all the articles of wildlife shipped and to whom and where shipped.

(4) The taxidermist shall keep the written record required under subsection (3) for as long as the articles of wildlife remain in the possession of the taxidermist or at least 5 years, whichever is longer. These records must be open to inspection by a warden at any reasonable time.

~~(5) Upon conviction for a violation of this section, the taxidermist's license of the person convicted may be revoked by the court.~~

(5) A person who violates this section is subject to the penalties provided in [section 51]."

Section 107. Section 87-4-306, MCA, is amended to read:

"87-4-306. Violations. ~~No~~ *A* person, firm, company, or corporation may *not* violate any of the provisions of this part. *A person convicted of a violation is subject to the penalties provided in [section 52].*"

Section 108. Section 87-4-407, MCA, is amended to read:

"87-4-407. License required — moratorium — penalty — seizure of illegally possessed animals. (1) A person may not operate an alternative livestock ranch in this state without having first obtained an alternative livestock ranch license from the department prior to November 7, 2000. A person may not apply for or be granted a license after that date.

(2) A person who operates an alternative livestock ranch without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is ~~guilty of a misdemeanor and is~~ subject to the penalties provided in ~~87-4-427(4)~~ *[section 53]*.

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to disposal by the department. Costs of seizure may be charged to the person in possession of the animal."

Section 109. Section 87-4-427, MCA, is amended to read:

"87-4-427. Revocation of license — criteria — penalties. (1) The department may revoke any alternative livestock ranch license or impose any of the penalties or conditions specified in subsection (3) if the licensee or the principal manager has committed or is responsible for any of the following acts or omissions:

(a) failure to operate an alternative livestock ranch according to the provisions of this part, rules adopted under this part, or stipulations of the alternative livestock ranch license;

(b) making a materially false statement in the license application;

(c) having pleaded guilty to or been convicted of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(d) two convictions or bond forfeitures of $100 or more for violations of the fish and game laws or applicable regulations of any state or the United States within the preceding 5 years;

(e) negligent or willful misconduct of the alternative livestock ranch operation, including but not limited to the unauthorized egress and ingress of game animal species or alternative livestock that:

(i) threatens public safety;

(ii) endangers native game animal populations or habitat through the establishment of feral populations, genetic pollution, or competition for forage or habitat; or

(iii) increases the risk of transmission of disease to native wildlife and the alternative livestock of others;

(f) a material and willful falsification of any required alternative livestock ranch records or reports;

(g) the purposeful capture of wild animals within the perimeter fence of an alternative livestock ranch;

(h) repeated failure to maintain or repair required fences or facilities; or

(i) any other willful conduct or omission that creates a substantial threat to other alternative livestock and operators or to native wildlife or habitat.

(2) If misconduct under subsection (1)(e) is negligent, the licensee must be given notice and 30 days to correct the misconduct and any adverse impacts of the misconduct. Negligent misconduct may be grounds for license revocation only if the misconduct is not corrected after the initial notice or if the misconduct is repeated.

(3) If the department finds, after opportunity for a hearing required under 87-4-428, that an alternative livestock ranch licensee or the principal manager is responsible for any act or omission set out in subsection (1), the department may in its discretion impose any one or more of the following penalties upon the licensee:

(a) revocation of the alternative livestock ranch license for up to 5 years;

(b) imposition of a civil penalty not to exceed $5,000, restoration of any damage to native wildlife, or both;

(c) deferral of the revocation of a license subject to the completion of or adherence to specified conditions; or

(d) reprimand of a licensee.

(4) In addition to the revocation of a license or other penalties allowed by this section, a person who purposely or knowingly violates this part or a rule adopted pursuant to this part is subject to ~~criminal prosecution and a fine of not more than $1,000, imprisonment in the county jail for not more than 1 year, or both. Any violation of 87-3-118 is subject to prosecution and penalties under that section~~ *the penalties provided in [section 53]*."

Section 110. Section 87-4-601, MCA, is amended to read:

"87-4-601. Sale of fish or spawn ~~unlawful — exceptions~~. ~~(1) Except as provided in subsections (2) through (4), a person may not, for speculative purposes, for market, or for sale, in any way, catch game fish or remove or cause to be removed the eggs or spawn of any game fish. A person may not sell or offer for sale game fish or the eggs or spawn from game fish.~~

~~(2) The restrictions of subsection (1) do not apply to:~~

~~(a) the catching of fish or the collecting of eggs or spawn in a private fish pond licensed under 87-4-603 by the owner of the pond;~~

~~(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for use in a private fish pond licensed under 87-4-603;~~

~~(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules of the commission;~~

~~(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules that the commission prescribes; or~~

~~(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.~~

~~(3) (a)~~*(1)* Until June 30, 2018, a person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish from the Yellowstone River between the burlington northern railroad bridge at Glendive to the North Dakota state line during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection ~~(3)(b)~~ *(2)* for processing and marketing as caviar. A paddlefish may be brought only to the Intake fishing access site for donation to the paddlefish roe donation program and must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.

~~(b)~~*(2)* The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

~~(c)~~*(3)* The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection ~~(3)(b)~~ *(2)* specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

~~(d) (i)~~*(4) (a)* Thirty percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, administration, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

~~(ii)~~*(b)* Seventy percent of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, and marketing must be paid to the nonprofit organization that processes and markets the caviar. The nonprofit organization's administrative costs must be paid from its share of the proceeds. An advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection ~~(3)(b)~~ *(2)*, two area local government representatives, and two representatives of area anglers. The advisory committee shall solicit

and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants.

~~(4)~~*(5)* A person may possess and sell legally taken nongame fish, as provided in 87-4-609 and rules adopted by the department pursuant to 87-4-609."

Section 111. Section 87-4-609, MCA, is amended to read:

"87-4-609. Regulation of commercial taking of fish or aquatic organisms — permit — rulemaking authority. (1) The department shall regulate the taking, for sale or commercial distribution, of:

(a) crayfish for fishing bait;

(b) crayfish from private fish ponds regulated under 87-4-603;

(c) mysis shrimp;

(d) designated species of nongame fish in waters designated by the commission pursuant to 87-3-204;

(e) whitefish as authorized by statute; and

(f) other aquatic organisms.

(2) ~~It is unlawful for a person~~ *In order to obtain a permit* to take fish or aquatic organisms for ~~commercial purposes without obtaining a permit from the department. A permit~~ *sale or commercial distribution, an* applicant shall provide the department with sufficient details of the proposed operation ~~to take any fish or aquatic organism for sale or commercial distribution~~ to enable the department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the waters.

(3) The department may:

(a) deny a permit if it determines that there is substantial potential that the proposed operation may harm a fishery or conflict with existing recreational uses of the waters;

(b) condition a permit to restrict the method of taking, the location of the taking, and the quality and quantity of harvest to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or

(c) require a permittee to submit harvest data to the department.

(4) A permit may be revoked for a violation of the conditions of the permit.

(5) The department may adopt rules for the regulation of commercial taking of fish or aquatic organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size limitations, and reporting requirements, to prevent overharvest or conflict with fishing and recreational uses of the waters."

Section 112. Section 87-4-803, MCA, is amended to read:

"87-4-803. Permits. (1) The department may grant permits for roadside menageries, wild animal menageries, and zoos. ~~It is unlawful for any person to operate a roadside menagerie or wild animal menagerie without a permit.~~ Application for a permit must be made to the director on a form prescribed by the director. The annual permit fee for five or less animals is $10. The annual permit fee for more than five animals is $25. Permits expire on December 31 but may be renewed upon payment of the annual fee and submission of a renewal application. This section does not apply to the United States, the state of Montana, or any county or city. A person who subscribes to any false statement in application for a permit is ~~guilty of a misdemeanor~~ *subject to the provisions of [section 58]* and may be denied a permit.

(2) (a) A permit application for a roadside menagerie must include:

(i) the applicant's name and address;

(ii) the exact location of the facility;

(iii) a list of species and the number of animals to be held in the facility;

(iv) the type of facility contemplated, including cage specifications;

(v) a copy of all required federal permits for exhibition of wild animals; and

(vi) a copy of a liability insurance policy to cover bodily injury or property damage.

(b) A permit application for a wild animal menagerie must include:

(i) the applicant's name and address;

(ii) the exact location of the facility, together with the nature of the applicant's title to the land, whether in fee, under lease, by contract for deed, or otherwise;

(iii) a list of species and the number of animals to be held in the facility;

(iv) the type of facility contemplated, including cage specifications; and

(v) information demonstrating that the applicant is responsible.

(c) A permit application for a zoo must include:

(i) the applicant's name and address;

(ii) the exact location of the facility;

(iii) a copy of the nonprofit corporation documents approved by the secretary of state's office;

(iv) a copy of the required federal permits for exhibition of wild animals; and

(v) if applicable, a copy of the American zoo and aquarium association accreditation program specific to the facility.

(3) Renewal applications for roadside menageries and wild animal menageries must include an accounting of all wild animals on the facility.

(4) A permit may not be granted by the department until it has satisfactorily verified that the provisions for housing and caring for the animals and for protecting the public are proper and adequate and in accordance with the standards established by the department.

(5) A permit is not transferable to another person."

Section 113. Section 87-4-807, MCA, is amended to read:

"87-4-807. Enforcement and penalty. (1) The provisions of this part ~~shall~~ *must* be enforced by any warden or any other legally authorized officer. Any person violating the provisions of this part shall upon conviction be punished as provided in ~~87-1-102~~ *[section 58]*, and at the discretion of the court, the permit and all rights and privileges inherent ~~therein~~ *in the permit* may be forfeited.

(2) Any animals being kept in violation of any section of this part may be confiscated or ordered disposed of at the discretion of the director. The permittee may appeal to the commission within 20 days of the date of the order to confiscate, and the commission shall hold a hearing on ~~such~~ an appeal.~~, and the~~ *The* decision of the commission ~~shall be~~ *is* final."

Section 114. Section 87-4-903, MCA, is amended to read:

"87-4-903. Game bird farm license required. Except as provided in 87-4-902, a person may not own, control, or propagate game birds unless the person holds a current game bird farm license from the department. *A person who violates this section is subject to the penalties provided in [section 59].*"

Section 115. Section 87-4-915, MCA, is amended to read:

"87-4-915. Field trials — permits. (1) As used in this section, "field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(2) ~~A person may not conduct a field trial unless the person has a permit under this section.~~ Applicants for a permit to conduct a field trial shall apply to the director upon a form furnished by the department for that purpose. The application must be signed and sworn to by the applicant, stating the applicant's name and address, the name and address of any national affiliate, the place for the field trial clearly defined, the date or dates of the proposed field trial, whether live birds are to be used, and any other information required by the director to determine the advisability of granting permission for the proposed field trial. The application must state that if a permit is granted, the applicant will carefully flush all wild game birds from fields used for the field trial each day before the field trial begins and will not permit dogs to run free in fields that have not been carefully flushed. The application must be presented to the director not less than 20 days prior to the date proposed for the field trial.

(3) The director may refuse any application that the director determines is not in the best interests of the protection, preservation, propagation, and conservation of game birds in this state. Any denial by the director of an application must state the reasons for denial and must be mailed to the applicant within 10 days of receipt of the application.

~~(4) An applicant receiving a permit to conduct a field trial may not violate or authorize violation of any of the terms of the permit.~~

~~(5)~~*(4)* All live game birds used in a field trial must be tagged before being planted or released and may be planted or released only in the presence of a representative of the department. If an untagged bird is shot during any field trial, the person to whom the permit was issued shall immediately replace it with a live bird.

~~(6)~~*(5)* (a) Dogs may be trained in open fields at any time without permission of the director only if:

(i) live game birds are not killed or captured during training; and

(ii) the training is more than 1 mile from any bird nesting or management area or game preserve.

(b) A person may train dogs with a method that will kill birds acquired from a game bird farm only after receiving a written permit from the department and only in compliance with the terms of the permit."

Section 116. Section 87-4-1002, MCA, is amended to read:

"87-4-1002. Fur farm license required — applicability. (1) Except as provided in subsection (2), a person may not own, control, or propagate furbearers unless the person holds a current fur farm license from the department.

(2) This part does not apply to the ownership, control, or propagation of furbearers if the ownership, control, or propagation is not for the sale or conveyance of furbearers or parts of furbearers.

(3) A person who violates this section is subject to the penalties provided in [section 60]."

Section 117. Section 87-5-204, MCA, is amended to read:

"87-5-204. License and rules for falconry and raptors. (1) The commission shall adopt specific rules for the keeping of records and for the trapping, taking, possession by residents and nonresidents, selling or transfer of

possession, or training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry and set license qualifications and fees. Rules adopted under this section are intended to conform to standards and regulations adopted under federal law by being at least as restrictive. ~~Except as provided in 87-5-210, it is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.~~

(2) Licensees must have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds must have in possession a valid resident or nonresident upland game bird license or waterfowl stamp, as appropriate.

(3) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department."

Section 118. Section 87-5-703, MCA, is amended to read:

"87-5-703. Applicability to other provisions for importation or introduction of wildlife. Sections 87-5-701 through 87-5-704, 87-5-711, 87-5-713 through 87-5-716, and 87-5-721 do not apply to the provisions on importation or introduction of wildlife contained in the following laws:

(1) Title 80;

(2) ~~87-3-207~~ *[section 20(1)(a)]* and 87-3-208;

(3) 87-3-221 through 87-3-224 or ~~87-3-209~~ *[section 20(1)(b)]*, 87-3-210, and 87-3-225 through 87-3-227;

(4) 87-4-422;

(5) 87-5-112;

(6) 87-5-205;

(7) 87-5-302; or

(8) Title 81, chapter 2."

Section 119. Section 87-5-721, MCA, is amended to read:

"87-5-721. Penalty — license and permit revocation and denial. (1) Except as provided in subsection (2), a person ~~who violates a provision~~ *convicted of a violation* of this part ~~is guilty of a misdemeanor punishable as provided in 87-1-102, and~~ *shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition,* the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than $500 or more than $5,000 and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend $500 of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit ~~from the date of conviction or forfeiture~~ any current hunting, fishing, or trapping license issued ~~under this title~~ *by this state* and the privilege to hunt, fish, or trap in this state for not less than 24 months *from the date of conviction or forfeiture*. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for ~~the lifetime of that person~~ *life*.

(3) Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within a time set by the department, not to exceed 6 months. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife."

Section 120. Repealer. The following sections of the Montana Code Annotated are repealed:

87-1-102. Penalties — violation of state law.
87-1-108. Suspension of privileges for failure to comply with citation or sentence.
87-1-109. Fish and game violation as inchoate offense.
87-1-110. Fish and wildlife code not to supersede criminal code — statute of limitations.
87-1-111. Restitution for illegal killing or possession of certain wildlife.
87-1-112. Finding required.
87-1-113. Payment — penalty for nonpayment.
87-1-114. Disposition of proceeds.
87-1-115. Restitution for illegal killing or possession of trophy wildlife.
87-1-121. Remedial hunter education program — sentencing.
87-1-125. Violation of orders or rules — penalties.
87-1-208. Inspection at checking station.
87-1-231. Tattooing of bears, wolves, tigers, mountain lions, or coyotes — when required — penalty.
87-2-103. License required.
87-2-109. Carrying and exhibiting license and identification.
87-2-110. Alteration, attachment, or transfer of license.
87-2-112. Forfeiture of license or permit for littering.
87-2-114. Misdemeanor and felony possession of hunting or fishing license or permit — penalties.
87-2-120. Lawful means of angling or fishing.
87-2-203. Unlawful sales of licenses.
87-2-205. False statement in license application.
87-2-509. Tagging of carcasses of game animals.
87-2-604. Permission of landowner required.
87-2-804. Revocation of exception.

87-3-101. General restrictions.
87-3-102. Waste of fish or game.
87-3-103. Limit on number of game animals hunted or killed.
87-3-104. Unlawful to hunt or fish during closed season.
87-3-105. Unlawful to import for introduction or to introduce or transplant wildlife.
87-3-107. Use of snare lawful under certain conditions.
87-3-108. Restrictions on use of reproduced sounds.
87-3-109. Attempting to take simulated wildlife decoy — penalty.
87-3-111. Unlawful possession, shipping, or transportation of game fish, birds, game animals, or fur-bearing animals — exceptions — penalties.
87-3-112. Possession and unlawful use of fishing implements.
87-3-116. Outfitting without license — penalties — disposition of fines.
87-3-117. Definitions of lawfully killed, captured, or taken and unlawfully killed, captured, or taken.
87-3-118. Unlawful sale of game fish, birds, game animals, or fur-bearing animals — penalty.
87-3-123. Use of silencers or mufflers on firearms forbidden.
87-3-124. Dogs — restrictions on hunting — penalty for chasing hooved game animals.
87-3-125. Restrictions on use of motor vehicles while hunting.
87-3-130. Taking of wildlife to protect persons or livestock.
87-3-134. Restriction on use of electronic motion-tracking device while hunting.
87-3-135. Restrictions on use of archery equipment.
87-3-141. Definitions.
87-3-142. Harassment prohibited.
87-3-143. Penalty.
87-3-144. Injunction.
87-3-205. Unlawful to possess net or seine — exceptions.
87-3-206. Unlawful to use explosives or poisons in taking fish.
87-3-207. Unlawful to place caged fish in public waters — exception.
87-3-209. Intrastate movement of diseased fish or eggs unlawful.
87-3-301. Shotgun loads regulated by department.
87-3-302. Colored garments required on big game hunters.
87-3-304. Landowner's permission required for hunting — penalty.
87-3-305. Unlawful to hunt deer within city or town boundaries.
87-3-306. Unlawful to destroy evidence of sex.
87-3-307. Contests based on size of game animals unlawful.
87-3-401. Restrictions on rifles for bird hunting.
87-3-402. Unlawful to violate closed season on certain game birds.
87-3-404. Tagging of turkey.
87-3-405. Failure to tag turkey.
87-3-501. Open and closed season for fur-bearing animals — exception.

87-3-503. Destruction of beaver and muskrat houses unlawful.

87-3-504. Metal tags required on traps.

87-3-505. Penalty.

87-3-506. Wasting of fur-bearing animals.

87-3-507. Unlawful to disturb traps or trapped animals belonging to another — exception.

87-4-608. Unlawful taking of crayfish — penalty.

87-4-1014. Unlawful capture.

Section 121. Codification instruction. (1) [Sections 1 through 80] are intended to be codified as an integral part of Title 87, and the provisions of Title 87 apply to [sections 1 through 80].

(2) [Section 81] is intended to be codified as an integral part of Title 87, chapter 4, part 5, and the provisions of Title 87, chapter 4, part 5, apply to [section 81].

Section 122. Coordination instruction. If both House Bill No. 337 and [this act] are passed and approved, then [sections 2 and 4 of House Bill No. 337] are void and [section 1 of Senate Bill No. 124] reads as follows:

"NEW SECTION. **Section 1. Definitions.** Unless the context requires otherwise, in [sections 1 through 80], the following definitions apply:

(1) "Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.

(2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under Title 87, chapter 4, part 4.

(3) (a) "Bait" means any animal matter, vegetable matter, or natural or artificial scent placed in an area inhabited by wildlife for the purpose of attracting game animals or game birds.

(b) The term does not include:

(i) decoys, silhouettes, or other replicas of wildlife body forms;

(ii) scents used only to mask human odor; or

(iii) types of scents that are approved by the commission for attracting game animals or game birds.

(4) "Closed season" means the time during which game birds, fish, game animals, and fur-bearing animals may not be lawfully taken.

(5) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families Suidae, Camelidae, or Hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(6) "Conviction" means a judgment or sentence entered following a guilty plea, a nolo contendere plea, a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury, or a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated.

(7) "Field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(8) "Fishing" means to take fish or the act of a person possessing any instrument, article, or substance for the purpose of taking fish in any location that a fish might inhabit.

(9) (a) "Fur dealer" means a person engaging in, carrying on, or conducting wholly or in part the business of buying or selling, trading, or dealing within the state of Montana in the skins or pelts of fur-bearing animals or predatory animals.

(b) If a fur dealer resides in Montana or if the fur dealer's principal place of business is within the state of Montana, the fur dealer is considered a resident fur dealer. All other fur dealers are considered nonresident fur dealers.

(10) "Fur farm" means enclosed land upon which furbearers are kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers.

(11) (a) "Fur-bearing animal" or "furbearer" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(b) As used in Title 87, chapter 4, part 10, "furbearer" does not include fox or mink.

(12) "Game animal" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear, and wild buffalo.

(13) "Game fish" means all species of the family Salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus Stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus Esox (northern pike, pickerel, and muskellunge); all species of the genus Micropterus (bass); all species of the genus Polyodon (paddlefish); all species of the family Acipenseridae (sturgeon); all species of the genus Lota (burbot or ling); the species Perca flavescens (yellow perch); all species of the genus Pomoxis (crappie); and the species Ictalurus punctatus (channel catfish).

(14) "Hunt" means to pursue, shoot, wound, kill, chase, lure, possess, or capture or the act of a person possessing a weapon, as defined in 45-2-101, or using a dog or a bird of prey for the purpose of shooting, wounding, killing, possessing, or capturing wildlife protected by the laws of this state in any location that wildlife may inhabit, whether or not the wildlife is then or subsequently taken. The term includes an attempt to take by any means, including but not limited to pursuing, shooting, wounding, killing, chasing, luring, possessing, or capturing.

(15) "Knowingly" has the meaning provided in 45-2-101.

(16) "Livestock" includes ostriches, rheas, and emus.

(17) "Migratory game bird" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; Wilson's snipes or jacksnipes; and mourning doves.

(18) "Negligently" has the meaning provided in 45-2-101.

(19) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(20) "Open season" means the time during which game birds, fish, and game and fur-bearing animals may be lawfully taken.

(21) "Participating state" means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact.

(22) "Person" means an individual, association, partnership, and corporation.

(23) "Possession" has the meaning provided in 45-2-101.

(24) "Predatory animal" means coyote, weasel, skunk, and civet cat.

(25) "Purposely" has the meaning provided in 45-2-101.

(26) "Raptor" means all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(27) "Resident" has the meaning provided in 87-2-102.

(28) "Roadside menagerie" means any place where one or more wild animals are kept in captivity for the evident purpose of exhibition or attracting trade, on or off the facility premises. It does not include the exhibition of any animal by an educational institution or by a traveling theatrical exhibition or circus based outside of Montana.

(29) "Sale" means a contract by which a person:

(a) transfers an interest in either game or fish for a price; or

(b) transfers, barters, or exchanges an interest either in game or fish for an article or thing of value.

(30) "Supplemental feed attractant" means any food, garbage, or other attractant for game animals. The term does not include growing plants or plants harvested for the feeding of livestock.

(31) "Taxidermist" means a person who conducts a business for the purpose of mounting, preserving, or preparing all or part of the dead bodies of any wildlife.

(32) "Trap" means to take or participate in the taking of any wildlife protected by state law by setting or placing any mechanical device, snare, deadfall, pit, or device intended to take wildlife or to remove wildlife from any of these devices.

(33) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(34) "Wild animal" means an animal that is wild by nature as distinguished from common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

(35) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats, are kept in captivity for use other than public exhibition.

(36) "Wild buffalo" means buffalo or bison that have not been reduced to captivity.

(37) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or any facility participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting wild animals for public viewing."

Section 123. Coordination instruction. If both House Bill No. 536 and [this act] are passed and approved, then [sections 1 of House Bill No. 536], amending 87-3-111, is void and [section 8 of Senate Bill No. 124] reads as follows:

"NEW SECTION. **Section 8. Unlawful possession, shipping, or transportation of game fish, bird, game animal, or fur-bearing animal.** (1) A person may not possess, ship, or transport all or part of any game fish, bird, game animal, or fur-bearing animal that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana.

(2) This section does not prohibit the possession, shipping, or transportation of:

(a) hides, heads, or mounts of lawfully killed, captured, or taken game fish, birds, game animals, or fur-bearing animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;

(b) naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) paddlefish roe as caviar under the provisions of 87-4-601; or

(e) captive-reared migratory waterfowl.

(3) A person may not possess, ship, or transport live fish away from the body of water in which the fish were taken except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted by the laws of this state;

(b) fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within the boundaries of the eastern Montana fishing district, as established by commission regulations.

(4) The possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the fish, bird, or animal is found killed, captured, or took the fish, bird, or animal.

(5) The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in [sections 68 and 69]. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(6) The following penalties apply for a violation of this section:

(a) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a game fish or bird and if the value of all or part of the game fish or bird or combination thereof does not exceed $1,000, the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a mountain sheep, moose, wild buffalo,

caribou, mountain goat, black bear, or grizzly bear or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $500 or more than $2,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture unless the court imposes a longer period.

(c) If a person is convicted or forfeits bond or bail after being charged with unlawful possession or transportation of a deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $300 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period.

(d) If a person is convicted or forfeits bond or bail after being charged with unlawful shipping of a mountain sheep, moose, wild buffalo, caribou, mountain goat, black bear, grizzly bear, deer, antelope, elk, or mountain lion or any part of these animals and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(e) If a person is convicted or forfeits bond or bail after being charged with unlawful possession, shipping, or transportation of a fur-bearing animal or pelt of a fur-bearing animal and if the value of all or part of the animal or combination thereof does not exceed $1,000, the person shall be fined not less than $100 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period, and any pelts possessed unlawfully must be confiscated.

(f) If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds $1,000, the person shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(7) A person convicted of unlawful possession of more than double the legal bag limit may be subject to the additional penalties provided in [section 63].

(8) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken.

(9) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69]."

Section 124. Coordination instruction. If both House Bill No. 336 and [this act] are passed and approved, then [section 3 of House Bill No. 336], amending 87-3-102, is void and [section 11 of Senate Bill No. 124] reads as follows:

"NEW SECTION. **Section 11. Waste of game animal, game bird, or game fish.** (1) Except as provided in subsection (3), a person responsible for the death of any game animal, game bird, or game fish suitable for food may not purposely or knowingly waste the game by:

(a) detaching or removing only the head, hide, antlers, tusks, or teeth or any or all of these parts from the carcass of a game animal;

(b) transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandoning the carcass of a game animal or any portion of the carcass suitable for food in the field.

(2) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food may not purposely or knowingly waste the game by:

(a) transporting, storing, or hanging the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposing of or abandoning any portion of the animal, bird, or fish that is suitable for food.

(3) A person responsible for the death of a mountain lion, except as provided in [section 6], may not abandon the head or hide in the field.

(4) A person responsible for the death of a grizzly bear wastes the game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes pursuant to 87-3-110.

(5) For the purposes of this section, the meat of a grizzly bear or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of a violation of this section may be fined not less than $50 or more than $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall:

(a) forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period; and

(b) pay restitution pursuant to [section 67 through 69].

(7) A person convicted of waste of game by abandonment in the field may be subject to the additional penalties provided in [section 63]."

Section 125. Coordination instruction. If both House Bill No. 536 and [this act] are passed and approved, then [section 2 of House Bill No. 536], amending 87-3-118, is void and [section 12 of Senate Bill No. 124] reads as follows:

"NEW SECTION. **Section 12. Unlawful sale of game fish, bird, game animal, or fur-bearing animal.** (1) A person may not purposely or knowingly

sell, purchase, or exchange all or part of any game fish, bird, game animal, or fur-bearing animal.

(2) The value of the game fish, bird, game animal, or fur-bearing animal must be determined from the schedules of restitution values set out in [sections 68 and 69]. The value of game fish, birds, game animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.

(3) This section does not prohibit the:

(a) sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided by federal law;

(b) sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(c) sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;

(d) donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-601; or

(e) sale, purchase, or exchange of captive-reared migratory waterfowl.

(4) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed $1,000, then the person shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person may be subject to forfeiture of any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for a period set by the court.

(5) If a person is convicted or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds $1,000, then the person shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 5 years, or both. In addition, the person shall forfeit any current hunting, fishing, or trapping license or permit issued by this state and the privilege to hunt, fish, or trap in this state for not less than 3 years up to a revocation for life from the date of conviction.

(6) As used in this section:

(a) "lawfully killed, captured, or taken" means killed, captured, or taken in conformance with this title, the regulations adopted by the commission, and the rules adopted by the department under authority of this title; and

(b) "unlawfully killed, captured, or taken" means not lawfully killed, captured, or taken."

Section 126. Coordination instruction. If both House Bill No. 536 and [this act] are passed and approved, then [section 13 of Senate Bill No. 124] is void.

Section 127. Coordination instruction. If both Senate Bill No. 135 and [this act] are passed and approved, then [section 1 of Senate Bill No. 135],

amending 87-3-124, is void and [section 36 of Senate Bill No. 124] reads as follows:

"NEW SECTION. **Section 36. Unlawful use of dog while hunting.** (1) Except as provided in subsections (3) through (6), a person may not:

(a) chase any game animal or fur-bearing animal with a dog; or

(b) purposely, knowingly, or negligently permit a dog to chase, stalk, pursue, attack, or kill a hooved game animal. If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) Except as provided in subsection (3)(d), a peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing a hooved game animal may destroy that dog on public land or on private land at the request of the landowner without criminal or civil liability.

(3) A person may:

(a) take game birds during the appropriate open season with the aid of a dog;

(b) hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs;

(c) hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs; and

(d) use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (2).

(4) A resident who possesses a Class D-3 resident hound training license may pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year.

(5) (a) A person with a valid hunting license issued pursuant to Title 87, chapter 2, may use a dog to track a wounded game animal during an appropriate open season. Any person using a dog in this manner:

(i) shall maintain physical control of the dog at all times by means of a maximum 50-foot lead attached to the dog's collar or harness;

(ii) during the general season, whether handling or accompanying the dog, shall wear hunter orange material pursuant to 87-3-302;

(iii) may carry any weapon allowed by law;

(iv) may dispose of the wounded game animal using any weapon allowed by the valid hunting license; and

(v) shall immediately tag an animal that has been reduced to possession in accordance with 87-2-509.

(b) Dog handlers tracking a wounded game animal with a dog are exempt from licensing requirements under Title 87, chapter 2, as long as they are accompanied by the licensed hunter who wounded the game animal.

(6) Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(7) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not

more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(8) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69]."

Section 128. Coordination instruction. If both House Bill No. 336 and [this act] are passed and approved, then [section 4 of House Bill No. 336], amending 87-3-506, is void and [section 48 of Senate Bill No. 124] reads as follows:

"NEW SECTION. **Section 48. Waste of fur-bearing animal.** (1) A person may not waste a fur-bearing animal by purposely or knowingly:

(a) failing to pick up traps or snares at the end of the trapping season so that the pelt of a fur-bearing animal is wasted;

(b) attending traps or snares so that fur-bearing animals are wasted; or

(c) wasting the pelt of any fur-bearing animal.

(2) The department shall enforce the provisions of this section.

(3) The following are exempt from this section:

(a) federal, state, and county predator control programs; and

(b) pelts of muskrat and beaver killed pursuant to [section 47(2)].

(4) As used in this section, "pelt" means the pelt, skin, or fur of a fur-bearing animal.

(5) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, a person, upon conviction or forfeiture of bond or bail, shall:

(a) forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture unless the court imposes a longer period; and

(b) pay restitution pursuant to [section 67 and 68]."

Section 129. Coordination instruction. If both House Bill No. 336 and [this act] are passed and approved, then [section 1 of House Bill No. 336], amending 87-1-111, is void and [section 68 of Senate Bill No. 124] reads as follows:

"NEW SECTION. **Section 68. Restitution for illegal killing, possession, or waste of certain wildlife.** (1) Except as provided in [section 69] and in addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the illegal taking, killing, possession, or waste of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

(a) mountain sheep and endangered species, $2,000;

(b) elk, caribou, bald eagle, black bear, wolf, and moose, $1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, $300;

(e) fur-bearing animals that are not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section."

Section 130. Coordination instruction. If both House Bill No. 336 and [this act] are passed and approved, then [section 2 of House Bill No. 336], amending 87-1-115, is void and [section 69 of Senate Bill No. 124] reads as follows:

"NEW SECTION. **Section 69. Restitution for illegal killing, possession, or waste of trophy wildlife.** In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of purposely or knowingly illegally killing, taking, possessing, or wasting a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

(1) mountain sheep with at least one horn equal to or greater than a three-fourth curl as defined by commission regulation, $30,000;

(2) elk with at least six points on one antler, as defined by commission regulation, or any grizzly bear, $8,000;

(3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, $6,000;

(4) antlered deer with at least four points on one antler as defined by commission regulation, $8,000;

(5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, $2,000."

Section 131. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 132. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 21, 2011

CHAPTER NO. 259

[SB 146]

AN ACT DECLARING THAT CERTAIN TRANSFER FEE COVENANTS DO NOT RUN WITH THE TITLE TO REAL PROPERTY AND ARE UNENFORCEABLE AT LAW OR IN EQUITY AGAINST A SUBSEQUENT OWNER, PURCHASER, OR MORTGAGEE OF REAL PROPERTY AS A COVENANT, AN EQUITABLE SERVITUDE, OR OTHERWISE; DECLARING THAT A LIEN FILED AGAINST REAL PROPERTY TO ENFORCE THE PAYMENT OF A TRANSFER FEE IS VOID AND UNENFORCEABLE; AMENDING SECTION 70-17-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Findings — purpose. The legislature finds and declares that transfer fee covenants, as defined in [section 2], impair the marketability and transferability of real property by constituting an unreasonable restraint on alienation regardless of the duration of the covenants or the amount of the transfer fees. The purpose of [sections 1 and 2] is to prohibit transfer fee covenants from running with the title to real property or binding subsequent owners of the property under common law or equitable principles.

Section 2. Transfer fee covenants — void. (1) A transfer fee covenant or any lien that is recorded or filed to enforce a transfer fee under a transfer fee covenant does not run with the title to real property and is not binding upon or enforceable at law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in the real property as a covenant, an equitable servitude, or otherwise.

(2) For purposes of this section, the following definitions apply:

(a) "Transfer" has the meaning provided in 70-1-501.

(b) "Transfer fee" means a fee or charge payable upon the transfer of legal or equitable title to an interest in real property regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the real property, the purchase price, or other consideration given for the transfer. For purposes of this section, a transfer fee does not include the following:

(i) consideration payable by the transferee to the transferor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the transferee based upon any subsequent appreciation, development, or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation to make the payment does not bind the original transferee's successors in interest to the property;

(ii) a commission payable to a licensed real estate salesperson or broker for the transfer of real property pursuant to an agreement between the broker and the transferor or the transferee, including any subsequent additional commission for the transfer payable by the transferor or the transferee based upon any subsequent appreciation, development, or sale of the property;

(iii) interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage, deed of trust, trust indenture, or other security interest against real property, including but not limited to a fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage or other security interest, fees, or charges payable to the lender;

(iv) consideration payable by a buyer under a contract for deed as a condition of allowing a buyer to acquire equitable title to the real property described in the contract for deed;

(v) any fee, charge, assessment, dues, contribution, or other amount payable to:

(A) an association of unit owners as defined in 70-23-102, or any association of homeowners, mobile home owners, townhouse owners, or other property owners created pursuant to a recorded declaration that has the power to require owners to pay the costs and expenses incurred in the performance of the association's obligations; or

(B) a nonprofit corporation as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3), 501(c)(4), or 528 of the Internal Revenue Code.

(c) "Transfer fee covenant" means a covenant or declaration recorded or filed against the title to real property that requires the payment of a transfer fee to the declarant or other person specified in the covenant or declaration or to the declarant's or other person's successors or assigns upon each subsequent transfer of a legal or equitable interest the real property.

(3) This section does not apply to any easement granted pursuant to Title 77.

Section 3. Section 70-17-203, MCA, is amended to read:

"70-17-203. Covenants that run with land. (1) Except as provided in 70-1-522~~,~~ *and [section 2],* every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; and

(b) conservation easements pursuant to 76-6-209.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Applicability. [This act] applies to transfer fee covenants filed on or after [the effective date of this act].

Approved April 21, 2011

CHAPTER NO. 260

[SB 218]

AN ACT ESTABLISHING PROCEDURES FOR SAMPLING PLANTS PROTECTED BY PATENT OR OTHER INTELLECTUAL PROPERTY LAWS; ALLOWING CONFIDENTIALITY; REQUIRING MEDIATION OF CLAIMS INVOLVING PROTECTED PLANTS; PROVIDING AN EXCEPTION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — purpose. (1) The legislature finds that:

(a) the production of diverse agricultural crops is critical to the economic stability of Montana;

(b) Montana's agricultural companies and producers strive to operate their companies and grow their crops pursuant to generally accepted farming principles and practices;

(c) agricultural companies and producers in Montana are responsible for operating their businesses in a cooperative manner with their neighbors;

(d) the ability of Montana's growers to continue to compete in an expanding worldwide market is dependent upon access to a variety of crops that are resistant to diseases and pests;

(e) Montana's arid climate necessitates the development of types of crops that are drought-tolerant; and

(f) science has been a critical part of agriculture since its inception.

(2) The purpose of [sections 1 through 6] is to provide an orderly process to be followed when an intellectual property claim related to plants arises.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Grower" means the person responsible for planting and managing a crop on land where infringement of an intellectual property right is suspected to have occurred.

(2) "Person" means an individual, firm, association, corporation, partnership, the state, a subdivision of the state, or any other form of business enterprise.

(3) "Protected plant" means any plant part or material, including but not limited to seeds and genetic traits, that is patented by the U.S. patent and trademark office or protected under the federal Plant Variety Protection Act, 7 U.S.C. 2321, et seq., or any other intellectual property protection recognized by federal law.

Section 3. Suspected violations — sampling procedures — confidentiality. (1) When an intellectual property owner or that person's agent makes a claim that a grower has planted, grown, or retained seed or any other plant part from a protected plant in violation of the intellectual property rights of another person, the claimant shall:

(a) request permission from the grower to enter the grower's land for the purpose of sampling;

(b) notify the grower that the grower may ask that the sampling be done by the department; and

(c) notify the department that a claim is being made.

(2) If the grower withholds permission to enter the grower's land or refuses to be present for sampling at a reasonable time and place, the claimant may petition a court for permission to enter the grower's land and [section 4(8)] applies.

(3) (a) A court may grant an order allowing a claimant to enter the property if the court determines the sampling effort to be:

(i) minimally invasive;

(ii) minimally disruptive; and

(iii) reasonably based on information sufficient to support an inspection.

(b) The court may order the claimant to pay for any physical damages caused during the process of sampling.

(4) (a) When sampling is conducted, the grower and the claimant both have the right to be present if both the grower and the claimant have made a good faith effort to be present at a reasonable time and place.

(b) A department representative must be present during sampling if the department's presence is requested by either the grower or the claimant.

(c) The department may perform the sampling if asked to do so by the claimant or the grower. The department shall charge a fee that covers the costs of providing the sampling service. The fee may not exceed other seed-related sampling fees charged by the department.

(5) Costs associated with sampling must be paid by the claimant unless:

(a) both parties agree to a different assignment of costs through a contractual or settlement agreement; or

(b) a different allocation is ordered through mediation or court order.

(6) (a) The grower or the claimant may request that an independent laboratory confirm the presence of a protected plant in the samples taken. If the department took the sample, the department shall select an independent and qualified laboratory to conduct the requested laboratory services.

(b) Costs associated with the laboratory services must be paid by the entity making the request unless:

(i) both parties agree to a different assignment of costs through a contractual agreement or settlement agreement; or

(ii) a different allocation is directed through mediation or court order.

(7) The results of any sampling and laboratory services conducted pursuant to this section must be sent to the grower and the claimant by certified mail within 30 days.

(8) The results of all sampling and testing are confidential unless both the grower and the claimant agree to make them public.

Section 4. Mediation required before judicial action. (1) Except as provided in subsection (8), a claimant shall seek mediation before seeking judicial relief regarding a claim that a grower has planted, grown, or retained seed or any plant part from a protected plant in violation of the intellectual property rights of another person.

(2) The claimant shall notify the grower by certified mail and shall also advise the department of the intellectual property claim.

(3) (a) A mediator chosen pursuant to this section must:

(i) be selected and agreed upon by the claimant and the grower;

(ii) be an attorney; and

(iii) possess the necessary skills and qualifications to be a mediator.

(b) Preference must be given to attorneys with experience in intellectual property claims.

(4) (a) The department shall maintain a list of qualified mediators willing to perform mediation under [sections 1 through 6]. Both parties to an action may suggest names of a mediator as soon as the grower and the department are notified of the claim. The parties are not limited to using mediators from the department's list.

(b) The parties shall exercise good faith and diligence in selection of the mediator. If the parties exercise good faith and diligence and are unable to agree upon a mediator within 90 days of notice to the grower, either party may seek judicial relief.

(5) (a) The selected mediator shall schedule mediation to begin within 30 days at a location agreeable to both parties. The parties shall conclude mediation within 30 days of commencement of mediation unless the parties agree to a longer mediation period.

(b) The parties shall share equally in the costs of the mediator and mediation unless a different cost-sharing arrangement is agreed to by the parties.

(6) A mediation that results in agreement between the claimant and the grower must be documented by the mediator and signed by an authorized representative of each party. The mediator shall retain an original copy of the signed agreement. The agreement is binding upon the claimant and the grower.

(7) The deliberations and the outcome of the mediation may not be made public unless agreed to by the grower and the claimant.

(8) The requirement for mediation does not apply to a claimant seeking judicial relief to conduct sampling pursuant to [section 3] and may not be used to delay the ability of a claimant or grower to obtain samples. An action filed to secure evidence following a grower's refusal to allow entry does not violate the mediation requirements of this section.

Section 5. Venue. If a contract between a grower and a claimant of an intellectual property right violation is silent with regard to venue for any legal proceedings regarding intellectual property rights, venue must be in the district court for the district in which the alleged intellectual property right violation occurred.

Section 6. Rulemaking. The department shall adopt rules for the purposes of implementing [sections 1 through 6]. The rules must include but are not limited to:

(1) the procedure for requesting the department's presence during sampling;

(2) the fees to be charged for the department's attendance and sampling services;

(3) notification procedures related to the mandatory mediation process; and

(4) a sampling protocol that provides that:

(a) the standards used for the field sampling and laboratory tests meet minimum standards as requested by the claimant; and

(b) samples must be submitted for testing within 10 days of the date of sampling.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to [sections 1 through 6].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 261

[SB 219]

AN ACT REVISING THE PROVISIONS RELATED TO ACCESS TO PROTESTED PROPERTY TAXES; REVISING THE PROVISIONS RELATED TO A SCHOOL DISTRICT'S ELECTION ON WHETHER TO WAIVE THE DISTRICT'S RIGHT TO RECEIVE ITS PORTION OF THE PROTESTED TAXES UPON SETTLEMENT OF THE TAX PROTEST; PROVIDING THAT

THE ELECTION APPLIES ONLY TO CENTRALLY ASSESSED PROPERTY AND INDUSTRIAL PROPERTY THAT IS ASSESSED ANNUALLY BY THE DEPARTMENT; ALLOWING LOCAL TAXING JURISDICTIONS TO ACCESS PROTESTED TAXES OF CENTRALLY ASSESSED INDUSTRIAL PROPERTY; REVISING THE CALCULATION OF GUARANTEED TAX BASE AID FOR A DISTRICT THAT ELECTS TO WAIVE ITS RIGHT TO RECEIVE ITS PORTION OF CENTRALLY ASSESSED PROTESTED TAXES; AMENDING SECTIONS 15-1-402, 15-1-409, AND 20-9-366, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.

(2) A person appealing a property tax or fee pursuant to *Title 15,* chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing

jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 and any protested taxes *on industrial property that is annually assessed by the department* in a school district that has elected to waive its right to protested taxes in a specific year pursuant to 15-1-409 must be remitted by the county treasurer to the department for deposit as provided in subsections (4)(b)(ii) through (4)(b)(iv).

(ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-108 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-108 must be deposited in a centrally assessed property tax state special revenue fund.

(iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.

(iv) Fifty percent of the funds from a school district that has waived its right to protested taxes must be deposited in the state general fund, and the other 50% must be deposited in a school district property tax protest state special revenue fund.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 *or on industrial property that is assessed annually by the department* in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(c) The provisions of ~~subsections (5)(a) and~~ *subsection* (5)(b) do not apply to a school district that has elected to waive its right to its portion of protested taxes *on centrally assessed property and on industrial property that is assessed annually by the department* for that specific year as provided in 15-1-409.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest

fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest. The department shall refund from the school district property tax protest state special revenue fund the protested portions of property taxes and interest to a taxpayer in a school district in which the school district has elected to waive its right to its portion of protested taxes for that specific year as provided in 15-1-409. If the amount available for the refund in the school district property tax protest state special revenue fund is insufficient to refund the property tax payments, the department shall pay the remainder of the refund from the state general fund.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to 15-10-108.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final

resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of $5 or less, a refund is not owed."

Section 2. Section 15-1-409, MCA, is amended to read:

"15-1-409. Exclusion of *certain* property subject to property tax protest — guarantee tax base — tax refund. (1) A school district that has *centrally assessed* property subject to pending property tax protests shall, prior to February 1 of each year, elect whether to waive the school district's right to receive its portion of protested taxes *under 15-1-402(5)(b)* for the previous year.

(2) If the school district elects to waive its right to its portion of the protested taxes *under subsection (1)*, the district's guaranteed tax base aid calculated under 20-9-366 must be determined based on the total taxable value of property in the school district ~~that is not subject to a tax protest~~ *less the taxable value of the centrally assessed property for which a school district waived its right to receive its portion of protested taxes*. Upon settlement or other resolution of the protest, the department is responsible for refunding protested taxes or paying any other costs due the protesting taxpayer and retaining any portion of protested taxes that would have been distributed to the school district for each year the school district has elected to waive receiving its portion of the protested taxes.

(3) For the purpose of this section, "centrally assessed property" means property that is centrally assessed pursuant to 15-23-101 and industrial property that is assessed annually by the department."

Section 3. Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through 20-9-371, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district, except for property *value disregarded because of protested taxes under 15-1-409(2) or property* subject to

the creation of a new school district under 20-6-326, divided by the sum of the district's current year BASE budget amount less direct state aid and the state special education allowable cost payment.

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district, except for property subject to the creation of a new school district under 20-6-326, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) "Facility guaranteed mill value per ANB", for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(4) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 193% and divided by the total sum of either the state elementary school districts' or the high school districts' current year BASE budget amounts less total direct state aid.

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 2 and 3] are effective October 1, 2011.

Section 5. Applicability. (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010.

(2) [Sections 2 and 3] apply to tax years beginning after December 31, 2011.

Approved April 21, 2011

CHAPTER NO. 262

[SB 242]

AN ACT REVISING WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF "EMPLOYEE" WITH RESPECT TO AGRICULTURE EMPLOYMENT; AMENDING SECTION 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by

39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's

training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(e) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole

proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum

wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved April 21, 2011

CHAPTER NO. 263

[SB 246]

AN ACT CLARIFYING THE PETITION PROCESS OF A REGULATED TELECOMMUNICATION SERVICES PROVIDER FOR SUBMITTING A PLAN FOR AN ALTERNATIVE FORM OF REGULATION; ELIMINATING CERTAIN REQUIREMENTS ASSOCIATED WITH A PROPOSED ORDER MODIFYING A PLAN FOR AN ALTERNATIVE FORM OF REGULATION; AMENDING SECTION 69-3-809, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-809, MCA, is amended to read:

"69-3-809. Alternative forms of regulation. (1) The commission may authorize a provider of regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking practices required under parts 2, 3, and 9 of this chapter, including but not limited to price caps and equitable sharing of earnings or revenues between a provider of regulated telecommunications services and its customers.

(2) A provider of regulated telecommunications services may petition the commission to regulate the provider under an alternative form of regulation. The provider shall submit its plan for an alternative form of regulation with its petition. The commission's order on the petition must be issued no later than 9 months after the filing of the petition. The commission shall review and may authorize implementation of the plan if it finds, after notice and hearing, that the plan:

(a) will not degrade the quality of or the availability of efficient telecommunications services;

(b) will produce fair, just, and reasonable rates for telecommunications services;

(c) will not unduly or unreasonably prejudice or disadvantage a customer class;

(d) will reduce regulatory delay and costs;

(e) is in the public interest;

(f) will enhance economic development in the state;

(g) will result in the improvement of the telephone infrastructure in the state; and

(h) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or 9 of this chapter conforms to the stated purpose.

(3) If the commission determines that the plan does not satisfy the requirements of this section, it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.

~~(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:~~

~~(a) remains subject to the same regulation that applied when the petition was filed; and~~

~~(b) may petition the commission to be regulated under a revised alternative plan.~~

~~(5)~~*(4)* Upon petition or upon its own motion, the commission may rescind its approval or amend an alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are no longer satisfied.

~~(6)~~*(5)* Nothing contained in this section may be construed as limiting or otherwise affecting the commission's authority to conduct investigations or hear complaints as provided in part 3 of this chapter."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 264

[SB 285]

AN ACT REQUIRING THE MONITORING OF CARBON DIOXIDE INJECTION WELLS FOR 50 YEARS UNLESS AN ALTERNATIVE TIMEFRAME IS APPROVED BY THE BOARD OF OIL AND GAS CONSERVATION; REQUIRING AN OPERATOR TO CONTINUE TO ACCEPT LIABILITY FOR A CARBON DIOXIDE STORAGE RESERVOIR AND THE STORED CARBON FOR A MINIMUM OF 30 YEARS; AMENDING SECTION 82-11-183, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the federal Environmental Protection Agency has adopted federal requirements under the underground injection control program for carbon dioxide geologic sequestration wells that require minimum monitoring timeframes with an opportunity for alternative timeframes; and

WHEREAS, the Board of Oil and Gas Conservation in consultation with the Department of Environmental Quality and the Department of Natural Resources and Conservation intends to seek primacy from the Environmental Protection Agency to implement the federal requirements for carbon dioxide geologic sequestration wells in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-183, MCA, is amended to read:

"82-11-183. (Effective on occurrence of contingency) Certificate of completion — department of environmental quality participation — transfer of liability. (1) Pursuant to subsection (3), after carbon dioxide injections into a reservoir end and upon completion of the certification requirements pursuant to subsections (4) and (5), the board shall issue the geologic storage operator a certificate of project completion.

(2) The board:

(a) shall adopt rules pursuant to 82-11-111 necessary for implementing subsection (4) of this section, including rules for public notice and hearing; and

(b) may, pursuant to 82-11-111, adopt any other rules necessary for administration of this section.

(3) ~~The~~ *Except as provided in subsection (11), the* certificate may not be issued until at least ~~15~~ *25* years after carbon dioxide injections end.

(4) Subject to subsection (5), the certificate may be issued only if the geologic storage operator:

(a) is in full compliance with regulations governing the geologic storage reservoir pursuant to this part;

(b) shows that the geologic storage reservoir will retain the carbon dioxide stored in it;

(c) shows that all wells, equipment, and facilities to be used in the postclosure period are in good condition and retain mechanical integrity;

(d) shows that it has plugged wells, removed equipment and facilities, and completed reclamation work as required by the board;

(e) shows that the carbon dioxide in the geologic storage reservoir has become stable, which means that it is essentially stationary or chemically combined or, if it is migrating or may migrate, that any migration will not cross the geologic storage reservoir boundary; and

(f) *except as provided in subsection (11),* shows that the geologic storage operator will continue to provide adequate bond or other surety after receiving

the certificate of completion for at least ~~15~~ *25* years following issuance of the certificate of completion and that the operator continues to accept liability for the geologic storage reservoir and the stored carbon dioxide.

(5) (a) Prior to issuing a certificate of completion, the board shall solicit, document, consider, and address comments from the department of environmental quality.

(b) Notwithstanding subsection (5)(a), the board makes the final decision on issuance of the certificate.

(6) ~~After~~ *Except as provided in subsection (11), after* issuing a certificate of completion, the board shall ensure adequate monitoring by the operator of the wells and reservoir, verifying compliance with subsection (4), for a period of ~~15~~ *25* years.

(7) (a) Following the monitoring and verification required in subsection (6) and subject to subsections (7)(b) and (7)(c), if the geologic storage operator has title to the geologic storage reservoir and the stored carbon dioxide, the geologic storage operator may transfer title to the geologic storage reservoir and to the stored carbon dioxide to the state.

(b) Prior to a transfer of title, the monitoring pursuant to subsection (6) must show that:

(i) the reservoir and wells are in full compliance with regulations pursuant to this part; and

(ii) the reservoir will maintain its structural integrity and will not allow carbon dioxide to move out of one stratum into another or pollute drinking water supplies.

(c) (i) Prior to a transfer of title, the board shall solicit, document, consider, and address comments from the department of environmental quality.

(ii) The board shall make a recommendation to the board of land commissioners as to whether title should transfer to the state.

(iii) Notwithstanding subsections (7)(c)(i) and (7)(c)(ii), the board of land commissioners shall make the final decision on the transfer of title.

(8) If liability is transferred pursuant to subsection (7):

(a) title is transferred, without payment or any compensation, to the state;

(b) title acquired by the state includes all rights and interests in and all responsibilities associated with the geologic storage reservoir and the stored carbon dioxide;

(c) the geologic storage operator and all persons who generated any injected carbon dioxide are released from all regulatory requirements and liability associated with the geologic storage reservoir and the stored carbon dioxide;

(d) any bonds or other surety posted by the geologic storage operator must be released; and

(e) monitoring and managing the geologic storage reservoir and the stored carbon dioxide is the state's responsibility to be overseen by the board until the federal government assumes responsibility for the long-term monitoring and management of geologic storage reservoirs and stored carbon dioxide.

(9) (a) If the operator does not transfer title to the state pursuant to subsection (7), the operator indefinitely accepts liability, except as provided in subsection (10), for the stored carbon dioxide and the geologic storage reservoir.

(b) If the operator is found not to be in compliance with subsection (7)(b), the operator retains liability until the operator is able to meet the requirements.

(10) After receiving a certificate of completion, every ~~15~~ *25* years after completing the monitoring and verification required by subsection (6), an operator may petition the board and request to transfer liability to the state and be released from liability pursuant to subsection (8). An operator who petitions the board pursuant to this subsection (10) may not request that the fee required by 82-11-181(1) or 82-11-184(2)(b) be remitted.

(11) (a) The board, in consultation with the appropriate federal agencies, the department of environmental quality, and the department of natural resources and conservation, may adopt rules allowing for compliance with the requirements of this part in a period of time of less than 50 years.

(b) The rules must:

(i) ensure compliance with monitoring and verification requirements; and

(ii) ensure that an operator provides an adequate bond or other surety and accepts liability for the geologic storage reservoir and the stored carbon for a period of at least 30 years before transferring liability to the state pursuant to subsection (7)."

Section 2. Contingent effective date. [This act] is effective on occurrence of the contingency contained in section 31(1), Chapter 474, Laws of 2009.

Approved April 21, 2011

CHAPTER NO. 265

[SB 288]

AN ACT ALLOWING ASSESSMENTS OF A SPECIAL DISTRICT TO BE APPEALED TO THE ADMINISTRATIVE BOARD OF THE DISTRICT; AND AMENDING SECTION 7-11-1027, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-11-1027, MCA, is amended to read:

"7-11-1027. Payment of assessment under protest — action to recover. (1) *(a)* When an assessment made under this part is considered ~~unlawful~~ *erroneous* by the party whose property is charged or from whom the payment is demanded, the person may*:*

(i) prior to the assessment becoming delinquent, file an appeal to the administrative board of the district; or

(ii) pay the assessment or any part of the assessment considered to be ~~unlawful~~ *erroneous* under protest to the county treasurer, city treasurer, or town clerk, whoever is charged with collection of the assessment*, and either file an appeal to the administrative board of the district or initiate action in court as provided in subsection (2).*

(b) (i) If an appeal is filed before the administrative board and the board finds in favor of the taxpayer, the board shall order the assessment, or the contested portion of the assessment, removed and if the payment was made under protest, it must be refunded by the county treasurer, city treasurer, or town clerk.

(ii) If an appeal is filed before the administrative board and the board does not find in favor of the taxpayer and if a payment was made under protest or the taxpayer makes a payment under protest before the assessment becomes delinquent, the taxpayer may initiate an action in court as provided in subsection (2).

(2) The party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the local government on whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. An action instituted to recover the assessment paid under protest must be commenced within 90 days after the date of payment.

(3) The assessment paid under protest must be held by the county treasurer, city treasurer, or town clerk until the determination of an action brought for the recovery of the assessment.

(4) If the assessment considered to be unlawful pertains to property created as a condominium and the property is not solely a certain unit in the condominium, then the owner of the property created as a condominium that is entitled to protest is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium.

(5) An owner of property created as a condominium may protest against the method of assessment or vote at an election of the special district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the special district the following:

(a) a writing identifying the condominium property;

(b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;

(c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and

(d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the method of assessment."

Approved April 21, 2011

CHAPTER NO. 266

[SB 357]

AN ACT PROHIBITING A RESIGNING MEMBER OF A BOARD OF COUNTY COMMISSIONERS FROM PARTICIPATING IN FILLING THE VACANCY TO BE CREATED BY THE RESIGNATION; AMENDING SECTIONS 2-16-501 AND 7-4-2106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-501, MCA, is amended to read:

"2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental disorder and is in need of commitment;

(3) resignation of the incumbent *becoming effective*;

(4) removal of the incumbent from office;

(5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent's office are required to be discharged;

(6) except as provided in 10-1-1008, absence of the incumbent from the state, without the permission of the legislature, beyond the period allowed by law;

(7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3 consecutive months, except when prevented by sickness, when absent from the state by permission of the legislature, or as provided in 10-1-1008;

(8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent's official duties;

(9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time prescribed;

(10) the decision of a competent tribunal declaring void the incumbent's election or appointment."

Section 2. Section 7-4-2106, MCA, is amended to read:

"7-4-2106. Vacancy on board of county commissioners — *resigning member not to participate in filling pending vacancy.* (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners shall fill the vacancy and the appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the vacancy is as follows:

(a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall then select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent or was originally nominated by a party that does not meet the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second or fourth year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second or fourth year of the term, the same procedure must be used as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the clerk and recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under subsection (2) shall serve until the end of the term.

(5) (a) If multiple vacancies occur simultaneously so that a quorum cannot be established, the county compensation board provided for in 7-4-2503 shall, subject to subsection (5)(c) of this section, appoint enough commissioners to allow for a quorum to be established. The vacancies must be filled in the order in which the commissioners' terms would have expired.

(b) If vacancies occur at different times but, because appointments have not yet been made, a quorum cannot be established, the county compensation board shall, subject to subsection (5)(c), appoint enough commissioners to allow for a quorum to be established. The county compensation board shall appoint each commissioner in the order that the vacancy occurred.

(c) (i) A commissioner appointed under this subsection (5) must meet the residency requirement in 7-4-2104(2) and must be from the same district as the commissioner being replaced.

(ii) If a commissioner being replaced represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall, within 30 days of the occurrence of the vacancy, submit to the county compensation board three names of people who have lived in the unrepresented district for at least 2 years prior to the occurrence of the vacancy. The county compensation board shall appoint each commissioner from the list of names provided by the county central committee.

(d) Once a quorum can be established, the county commissioners forming the quorum shall appoint the remaining commissioners as provided in this section.

(e) If a county compensation board does not exist, appointments under this subsection (5) must be made by a district judge having jurisdiction in the county.

(6) If a member of the board of county commissioners has submitted the member's resignation as provided in 2-16-502 or if proceedings have begun to remove the member from office under 2-16-501, that member may not be considered to be a remaining member of the commission as provided in this section and may not participate in filling the vacancy to be created when the resignation becomes effective."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 21, 2011

CHAPTER NO. 267

[SB 367]

AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO USE INDIVIDUAL, GENERAL, AND ALTERNATIVE NUTRIENT STANDARDS VARIANCES TO ESTABLISH PERMIT LIMITS FOR POINT SOURCE DISCHARGES TO SURFACE WATER; ALLOWING INFORMATION RELATED TO BASE NUMERIC NUTRIENT STANDARDS OR NUTRIENT STANDARDS VARIANCES TO BE CONFIDENTIAL; AND AMENDING SECTIONS 75-5-103, 75-5-105, AND 75-5-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality ~~standards~~ *criteria* for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(22)~~*(23)* "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of ~~temporary nutrient criteria~~ *nutrient standards variances*, and the implementation of those standards and ~~criteria~~ *variances* together with associated economic impacts.

~~(23)~~*(24)* "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(24)~~*(25)* "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(25)~~*(26)* "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(26)~~*(27)* "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(27)~~*(28)* "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(28)~~*(29)* "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(29)~~*(30)* (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to

public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(30)~~*(31)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(31)~~*(32)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(32)~~*(33)* "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(33)~~*(34)* (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(34)~~*(35)* "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.~~

(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

75-5-103. (Effective on occurrence of contingency) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality ~~standards~~ *criteria* for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can

occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(22)~~*(23)* "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of ~~temporary nutrient criteria~~ *nutrient standards variances*, and the implementation of those standards and ~~criteria~~ *variances* together with associated economic impacts.

~~(23)~~*(24)* "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(24)~~*(25)* "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(25)~~*(26)* "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(26)~~*(27)* "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(27)~~*(28)* "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(28)~~*(29)* "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(29)~~*(30)* (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(c) Contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1, is not pollution and does not require a mixing zone.

~~(30)~~*(31)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(31)~~*(32)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(32)~~*(33)* "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(33)~~*(34)* (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(34)~~*(35)* "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.~~

(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 2. Section 75-5-105, MCA, is amended to read:

"75-5-105. Confidentiality of records. Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. ~~The~~ *Except as provided in [section 4], the* data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section."

Section 3. Section 75-5-313, MCA, is amended to read:

"75-5-313. ~~Temporary nutrient criteria~~ *Nutrient standards variances — individual, general, and alternative.* (1) The department ~~may~~ *shall*, on a case-by-case basis, approve the use of ~~temporary nutrient criteria~~ *an individual nutrient standards variance* in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts, ~~or the~~ limits of technology, *or both*.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines *for individual nutrient standards variances* to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana*, acknowledging that advanced treatment technologies for removing nutrients will result in significant and widespread economic impacts.* ~~and may also consider relevant guidance of the United States environmental protection agency pertaining to analysis of economic impacts from water quality standards.~~

~~(b) In the event that economic impacts do not justify temporary nutrient criteria for a particular discharger, the department may approve temporary nutrient criteria based upon a finding that the limits of technology preclude the attainment of the base numeric nutrient standards. The department's determination that the limits of technology justify temporary nutrient criteria must be based on available and proven treatment technologies at the time the temporary nutrient criteria are approved.~~

~~(c)~~*(b)* The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards ~~or criteria~~ to the board and shall continue to consult with the nutrient work group in implementing ~~temporary nutrient criteria~~ *individual nutrient standards variances*.

(3) The department shall review each application for ~~temporary nutrient criteria~~ *an individual nutrient standards variance* on a case-by-case basis to determine if there are reasonable alternatives, such as trading*,* ~~or~~ permit compliance schedules, *or the alternatives provided in subsections (5), (10), and (11),* that preclude the need for the ~~temporary criteria~~ *individual nutrient standards variance*.

(4) ~~(a) Temporary nutrient criteria~~ *Individual nutrient standards variances* approved by the department become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

~~(b) Temporary nutrient criteria may be established for a period not to exceed 20 years and must be reviewed by the department every 5 years from the date of adoption to ensure that the justification for their adoption is still valid.~~

(5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

(b) The department shall approve the use of a general nutrient standards variance for permittees with wastewater treatment facilities that discharge to surface water:

(i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply;

(ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a monthly

average during the period in which the base numeric nutrient standards apply; or

(iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the performance of the lagoon at a level equal to the performance of the lagoon on [the effective date of this act].

(6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

(b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

(7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

(b) If more cost-effective and efficient treatment technologies are available, the concentration levels provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

(c) The updates become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(8) An individual, general, or alternative nutrient standards variance may be established for a period not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure that the justification for its adoption remains valid.

(9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure.

(b) The department may request that a permittee provide the results of an optimization study and nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient variance.

(10) (a) A permittee may request that the department provide an alternative nutrient standards variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

(b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements of subsections (8) and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the watershed continues to remain insignificant.

(11) The department shall encourage the use of alternative effluent management methods to reduce instream nutrient loading, including reuse, recharge, land application, and trading.

~~(c)~~*(12)* On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the environmental quality council by providing a summary of the status of the base numeric nutrient standards, ~~temporary nutrient criteria~~ *the nutrient standards variances*, and implementation of those ~~criteria~~ *standards and variances*, including estimated economic impacts.

~~(d)~~*(13)* On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the previous two reports provided in subsection ~~(4)(c)~~ *(12)* to the environmental quality council in accordance with 5-11-210."

Section 4. Confidentiality of base numeric standards and nutrient standards variances. (1) Except as provided in 80-15-108 and subsection (2) of this section, information concerning base numeric nutrient standards or nutrient standards variances that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use.

(2) Information unique to the owner or operator of a source of a discharge related to base numeric nutrient standards or nutrient standards variances that would, if disclosed, reveal methods or processes entitled to protection as trade secrets as defined in 30-14-402 must be maintained as confidential if so determined by a court of competent jurisdiction.

(3) (a) The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential.

(b) The department must be served in the action and may intervene as a party.

(c) Information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 4].

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 21, 2011

CHAPTER NO. 268

[SB 374]

AN ACT REVISING LAWS RELATED TO CANDIDATES FOR PRECINCT COMMITTEE REPRESENTATIVES OF EACH PARTY; CLARIFYING THE PROCESS FOR FILLING A VACANCY IN A PRECINCT COMMITTEE POSITION; AND AMENDING SECTION 13-38-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-38-201, MCA, is amended to read:

"13-38-201. Election of committee representatives at primary — *vacancies.* (1) Except as provided in subsection (4), each political party shall elect at each primary election one person of each sex to serve as committee representatives for each election precinct. The committee representatives must be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for *precinct* committee representative by a ~~written statement~~ *declaration of nomination*, signed by the elector, notarized, and filed in the office of the ~~registrar~~ *county election administrator* within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) Except as provided in subsection (4), the names of candidates for precinct committee representative of each political party must appear on the party ticket in the same manner as other candidates and are voted for in the same manner as other candidates.

~~(4) If only one person of each sex has been nominated to fill a precinct's positions, the election administrator may decline to include that precinct's election in the primary election. If a precinct's election is not held during the primary election pursuant to this subsection, the county governing body shall declare elected by acclamation the candidates nominated for that precinct's committee representative positions.~~

(4) If the number of candidates nominated for a party's precinct committee representatives is less than or equal to the number of positions to be elected, the election administrator may give notice that a party's precinct committee election will not be held in that precinct.

(5) If a party precinct committee election is not held pursuant to subsection (4), the election administrator shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate. The election administrator shall issue a certificate of election to the designated party.

(6) Write-in votes for precinct committee representatives may be counted as specified in 13-15-206(5) only if the individual whose name is written in has filed a declaration of intent as a write-in candidate by the deadline prescribed in 13-10-211(1).

(7) Pursuant to 13-38-101, a vacancy in a precinct committee representative position must be filled by the party governing body as provided in its rules."

Approved April 21, 2011

CHAPTER NO. 269

[SB 413]

AN ACT CLARIFYING THE DUE DATE OF INDIVIDUAL INCOME TAX RETURNS AND CORPORATION LICENSE OR INCOME TAX RETURNS WHEN THE DUE DATE OF THE RETURN FALLS ON CERTAIN FEDERAL HOLIDAYS OR FEDERALLY DECLARED DISASTERS NOT OBSERVED IN MONTANA; AMENDING SECTIONS 15-30-2504, 15-30-2512, 15-30-2604, 15-30-3302, 15-31-101, 15-31-111, 15-31-141, AND 15-31-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-2504, MCA, is amended to read:

"15-30-2504. Schedules for remitting income withholding taxes — records. (1) ~~Each~~ *Subject to the due date provision in 15-30-2604(1)(b), an* employer shall remit the taxes withheld from employee wages as follows:

(a) An employer whose total liability for state income tax withholding during the preceding lookback period was $12,000 or more shall remit on an

"accelerated schedule", which is the same as the employer's federal due dates for federal tax deposits.

(b) An employer whose total liability for state income tax withholding during the preceding lookback period was less than $12,000 but more than $1,199 shall remit on a "monthly schedule" for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) An employer whose total liability for state income tax withholding during the preceding lookback period was less than $1,200 shall remit on an "annual schedule" for which the remittance due date is on or before February 28 of the year following payment of wages.

(d) An employer who has no withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted.

(2) An employer who has not complied with the requirements of this section shall, upon written notice from the department, remit on the monthly schedule described in subsection (1)(b).

(3) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.

(4) A new employer or an employer with no filing history is subject to the monthly remittance schedule in subsection (1)(b) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

(5) An employer may elect to remit payments on a more frequent basis than is required by subsection (1).

(6) An employer may use alternative remittance methods in conjunction with the department's electronic remittance program in accordance with department rules.

(7) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.

(8) Each employer shall keep accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer's expense."

Section 2. Section 15-30-2512, MCA, is amended to read:

"15-30-2512. Estimated tax — payment — exceptions — interest. (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-2502, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than $500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) ~~For~~ *Subject to the due date provision in 15-30-2604(1)(b), for* each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) ~~For~~ *Subject to the due date provision in 15-30-2604(1)(b), for* each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest on the amount of the underpayment as provided in 15-1-216. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For ~~each~~ *a* married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-2101, from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

Section 3. Section 15-30-2604, MCA, is amended to read:

"15-30-2604. Time for filing — extensions of time. (1) *(a)* ~~A~~ *Except as provided in subsection (1)(b), a* return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the Internal Revenue Service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(2) ~~Each~~ *The* return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. ~~There~~ *An affidavit or affirmation* must be attached to the return ~~the affidavit or affirmation of~~ *from* the persons making the return ~~to the effect~~ *verifying* that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve ~~any~~ *the* taxpayer of the obligation to make ~~any~~ *a* return required under this chapter. ~~Each~~ *A* taxpayer liable for a tax under this chapter shall pay a minimum tax of $1.

~~(2)~~*(3)* (a) Subject to subsections ~~(2)(b)~~ *(3)(b)* and ~~(2)(c)~~ *(3)(c)*, a taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) On or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(c) The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection ~~(2)(b)~~ *(3)(b)* must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

~~(3)~~*(4)* The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

~~(4)~~*(5)* The extension of time for filing a return is not an extension of time for the payment of taxes."

Section 4. Section 15-30-3302, MCA, is amended to read:

"15-30-3302. Income or license tax involving pass-through entities — information returns required. (1) Except as otherwise provided:

(a) a partnership is not subject to taxes imposed in Title 15, chapter 30 or 31;

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a disregarded entity is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, member, or other owner of an entity described in subsection (1)(c), the first-tier pass-through entity, is subject to the taxes provided in this chapter, if an individual, trust, or estate, and to the taxes

provided in Title 15, chapter 31, if a C. corporation. If a partner, shareholder, member, or other owner of an entity described in subsection (1) is itself a pass-through entity, any individual, trust, or estate to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in this chapter and any C. corporation to which the first-tier pass-through entity's Montana source income is directly or indirectly passed through is subject to the taxes provided in Title 15, chapter 31.

(3) Income realized for federal income tax purposes by a financial institution that has elected to be treated as an S. corporation under subchapter S. of Chapter 1 of the Internal Revenue Code and by its shareholders that is attributable to the financial institution's change from the bad debt reserve method of accounting provided in section 585 of the Internal Revenue Code, 26 U.S.C. 585, is not taxable under Title 15, chapter 30 or 31, to the extent that the aggregate deductions allowed for federal income tax purposes under 26 U.S.C. 585 exceeded the aggregate deductions that the financial institution is allowed under 15-31-114(1)(b)(i).

(4) A publicly traded partnership as defined in section 7704(b) of the Internal Revenue Code, 26 U.S.C. 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code is exempt from paying tax under Title 15, chapter 30, as long as it is in compliance with 15-30-3313.

(5) (a) ~~A~~ *Subject to the due date provision in 15-30-2604(1)(b), a* partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) ~~An~~ *Subject to the due date provision in 15-30-2604(1)(b), an* S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) A disregarded entity that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each member or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) (i) Except as provided in subsection (5)(d)(ii), a pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of $10 multiplied by the number of the entity's partners, shareholders, members, or other owners at the close of the tax year for each month or fraction of a month, not to exceed 5 months, that the entity fails to file the information return. The department may waive the penalty imposed by this subsection (5)(d)(i) as provided in 15-1-206.

(ii) The penalty imposed under subsection (5)(d)(i) may not be imposed on a pass-through entity that has 10 or fewer partners, shareholders, members, or other owners, each of whom:

(A) is an individual, an estate of a deceased individual, or a C. corporation;

(B) has filed any required return or other report with the department by the due date, including any extension of time, for the return or report; and

(C) has paid all taxes when due."

Section 5. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes an association, joint-stock company, common-law trust or business trust that does business in an organized capacity, all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association for federal income tax purposes and that is not a disregarded entity.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, ~~every~~ *a* corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding ~~taxable~~ *tax* year at the rate set forth in this chapter. ~~In the case of corporations having~~ *If a corporation has* income from business activity ~~which~~ *that* is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502 *and subject to the due date provision in 15-31-111(2)(b),* ~~this~~ *the* tax is due and payable on the 15th day of the 5th month following the close of the ~~taxable~~ *tax* year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the ~~taxable~~ *tax* year in which the income was earned and is for the privilege of carrying on business in this state for the ~~taxable~~ *tax* year in which the income was earned.

(4) ~~Every~~ *A* bank organized under the laws of the state of Montana, of any other state, or of the United States and ~~every~~ *a* savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. For ~~taxable~~ *tax* years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 6. Section 15-31-111, MCA, is amended to read:

"15-31-111. Return to be filed — penalty and interest. (1) ~~Each~~ *A* corporation subject to the license tax imposed under this chapter shall for each tax period file an accurate return of its net income for the tax period in the manner and form prescribed by the department. The return must contain all of the information that is appropriate and in the opinion of the department necessary to determine the correctness of the net income disclosed by the return and to carry out the provisions of this chapter. The return must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting officer.

(2) *(a)* ~~If~~ *Except as provided in subsection (2)(b), if* the corporation is reporting on a calendar year basis, the return must be filed with the department on or before May 15 following the close of the calendar year. If the corporation is reporting on a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year.

(b) (i) If the due date of the return falls on a holiday that defers a filing date as recognized by the Internal Revenue Service and that is not observed in Montana, the return may be made on the first business day after the holiday.

(ii) The department may extend filing dates and defer or waive interest, penalties, and other effects of late filing for a period not exceeding 1 year for taxpayers affected by a federally declared disaster or a terroristic or military action recognized for federal tax purposes under 26 U.S.C. 7508A.

(3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6 months following the date prescribed for filing of its tax return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-31-510(2).

(b) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a corporation subject to the license tax imposed by this chapter shall make the return in the same manner and form as the corporation is required to make the return. Any license tax due on the basis of the return is assessed and collected in the same manner as if assessed directly against the corporation of whose business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or stockholders."

Section 7. Section 15-31-141, MCA, is amended to read:

"15-31-141. Consolidated returns — computation and procedure — penalty and interest. (1) Corporations that are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department. For purposes of this section, a "unitary business operation" means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) A corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. A corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, the assets of the corporation that are required for the purposes of this chapter, and any other information that the department may require, but excluding intercorporate stockholdings and intercorporate accounts. If it appears to the department that any arrangement exists in a manner that improperly reflects the business done, the segregable assets, or the entire net income earned from business done in this state, the department may equitably adjust the tax in a manner that it may determine.

(6) (a) If an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its tax period in which its income is not included in the consolidated return of the group. ~~The~~ *Subject to the due date provision in 15-31-111(2)(b), the* separate return must be filed no later than the 15th day of the 5th month following the close of the tax period for which a consolidated return of the affiliated group is filed.

(b) (i) A corporation is allowed an automatic extension of time for filing its tax return of up to 6 months following the date prescribed for filing its return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-31-510(2).

(ii) The department may grant an additional extension of time for filing of a tax return whenever in its judgment good cause exists."

Section 8. Section 15-31-502, MCA, is amended to read:

"15-31-502. Assessment and payment of tax — estimated tax payment — amount of required installments. (1) All taxpayers shall compute the amount of tax payable under this chapter and shall remit the amount to the department of revenue on or before the 15th day of the 5th month following the close of the ~~taxable~~ *tax* period.

(2) (a) ~~Each~~ *A* corporation shall make estimated tax payments if its annual estimated tax is $5,000 or more. ~~The~~ *Subject to the due date provision in 15-31-111(2)(b), the* estimated payments must be made in installments, as follows, if the $5,000 threshold is met or exceeded:

(i) For a corporation taxed on a calendar-year basis:

For the following required installments the due date is:	
1st	April 15
2nd	June 15

3rd	September 15
4th	December 15

(ii) For a corporation taxed on a fiscal-year basis:

For the following required installments the due date is:

1st	15th day of the 4th month
2nd	15th day of the 6th month
3rd	15th day of the 9th month
4th	15th day of the 12th month

(b) Except as provided in 15-31-510, the amount of any required installment is 25% of the required annual payment. The required annual payment is the lesser of:

(i) 80% of the tax shown on the return for the ~~taxable~~ *tax* year or, if a return is not filed, 80% of the tax for that year; or

(ii) 100% of the tax shown on the return of the corporation for the preceding ~~taxable~~ *tax* year if the preceding ~~taxable~~ *tax* year was a period of 12 months and if the corporation filed a return for that year.

(3) The application of this section to ~~taxable~~ *tax* years of less than 12 months must be in accordance with rules adopted by the department.

(4) At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment."

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax returns made after December 31, 2010.

Approved April 21, 2011

CHAPTER NO. 270

[HB 188]

AN ACT GENERALLY REVISING LAWS GOVERNING REAL ESTATE APPRAISERS; REVISING DEFINITIONS; PROVIDING FOR REGULATION OF APPRAISAL MANAGEMENT COMPANIES; GOVERNING RELATIONSHIPS BETWEEN APPRAISAL MANAGEMENT COMPANIES AND APPRAISERS; EXPANDING RULEMAKING AUTHORITY OF THE BOARD OF REAL ESTATE APPRAISERS; AND AMENDING SECTIONS 37-54-102 AND 37-54-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-54-102, MCA, is amended to read:

"37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of *Professional* Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal" means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice as developed by the appraisal foundation.

~~(1)~~*(2)* "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title

XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(3) "Appraisal management company" means, in connection with valuation of properties collateralizing mortgage loans or mortgages incorporated into a securitization, an external third party, authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in this state or 25 or more nationally within a given year.

(4) "Appraisal management services" means the direct or indirect performance of any of the following functions on behalf of a lender, financial institution, client, or other person in conjunction with a consumer credit transaction that is secured by a consumer's principal dwelling:

(a) administering an appraiser panel;

(b) recruiting, retaining, or selecting appraisers to be part of an appraisal panel;

(c) qualifying and verifying licensing or certification, negotiating fees, and verifying service level expectations with appraisers who are part of an appraiser panel;

(d) contracting with appraisers from the appraiser panel to perform appraisal assignments;

(e) receiving an order for an appraisal assignment from one person and delivering the order for the appraisal assignment to an appraiser who is part of an appraiser panel for completion;

(f) managing the process of having an appraisal assignment performed, including performing administrative duties such as receiving appraisal assignment orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed;

(g) tracking and determining the status of orders for appraisal assignments;

(h) conducting quality control examinations of a completed appraisal assignment prior to the delivery of the appraisal report to a client who ordered the appraisal assignment; and

(i) providing a completed appraisal report performed by an appraiser to one or more clients.

(5) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term does not include a quality control examination.

(6) "Appraiser" means an individual who holds a license or certification to complete an appraisal assignment in the state where the real property that is the subject of the appraisal assignment is located.

(7) "Appraiser panel" means a network of licensed or certified appraisers who are independent contractors with respect to an appraisal management company and who have:

(a) responded to an invitation, request, or solicitation from an appraisal management company to:

(i) perform an appraisal assignment for a client that has ordered an appraisal assignment through the appraisal management company; or

(ii) perform appraisal assignments for the appraisal management company directly on a periodic basis as requested and assigned by the appraisal management company; and

(b) been selected and approved by an appraisal management company to perform appraisal assignments for any client of the company that has ordered an appraisal assignment through the company or to perform appraisal assignments for the appraisal management company directly on a periodic basis as assigned by the appraisal management company.

~~(2)~~*(8)* "Board" means the board of real estate appraisers provided for in 2-15-1758.

~~(3)~~*(9)* "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(10) "Controlling person" means:

(a) an owner, officer, or director of a corporation, partnership, or other business entity that offers appraisal management services in this state;

(b) an individual employed, appointed, or authorized by an appraisal management company to enter into a contractual relationship with other persons for the performance of appraisal management services and to enter into agreements with appraisers for the performance of appraisal assignments; or

(c) an individual who possesses directly or indirectly the power to direct or cause the direction of the management or policies of an appraisal management company.

~~(4)~~*(11)* "Department" means the department of labor and industry provided for in 2-15-1701.

~~(5)~~*(12)* "Licensed real estate appraisal trainee" means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

~~(6)~~*(13)* "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

(14) "Person" means an individual, firm, partnership, association, corporation, or other business entity.

(15) "Quality control examination" means an examination of an appraisal report for completeness, including grammatical, mathematical, and typographical errors."

Section 2. Section 37-54-105, MCA, is amended to read:

"37-54-105. Powers and duties of board. The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of processing an application for licensure and certification and renewal of a license or certificate;

(3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

(4) prescribe the examinations for licensure or certification and determine the acceptable level of performance on examinations;

(5) receive and review applications for licensure and certification and issue licenses and certificates;

(6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(7) retain all applications and other records submitted to it;

(8) adopt by rule standards of professional appraisal practice in this state;

(9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers *or registered appraisal management companies*; and

(10) perform other duties necessary to implement this chapter."

Section 3. Appraisal management company registration. (1) (a) It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration issued by the board.

(b) An applicant for registration as an appraisal management company in this state shall submit an application to the board on forms prescribed by the department.

(c) If a registration process is not in effect on October 1, 2011, an appraisal management company already conducting business in this state may continue to conduct business in accordance with this chapter until 120 days after a registration process becomes available. Upon expiration of the 120-day period, the appraisal management company must be registered as required by this chapter in order to continue to provide or offer to provide appraisal management services in this state.

(2) An application for the registration required by subsection (1) must include the following information:

(a) the name of the person seeking registration and the fictitious name or names, if any, under which the person does business in any state;

(b) the business address of the person seeking registration;

(c) the phone contact information of the person seeking registration;

(d) if the appraisal management company is not a corporation domiciled in this state, the name and contact information for the company's designated contact for service of process in this state;

(e) the name, address, and contact information for one controlling person within the appraisal management company;

(f) a certification that the person has a system and process in place to verify that an individual holds a license in good standing in this state pursuant to 37-54-202 if a license or certification is required to perform appraisal assignments;

(g) a certification that the person requires appraisers completing appraisal assignments at its request to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence;

(h) a certification that the person has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;

(i) a certification that the person has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act of 1968, 15 U.S.C. 1601, et seq., including the requirement that the fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer;

(j) a certification that the person maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal service for the appraisal management company;

(k) an irrevocable uniform consent to service of process; and

(l) any other information required by the board that is reasonably necessary to implement this chapter.

(3) An application for renewal of a registration must include information substantially similar to that required for the initial registration in subsection (2), as determined by the board.

(4) Renewals of registered appraisal management companies must be in accordance with 37-1-141. The department shall provide notice to an appraisal management company prior to the renewal date.

Section 4. Registration exemptions. (1) The provisions of this chapter do not apply to a person who exclusively employs appraisers on an employer-employee basis for the performance of an appraisal assignment.

(2) An appraisal management company that is a subsidiary owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency is not required to register with the board but shall comply with all provisions of this chapter, as long as the provisions of this chapter do not conflict with federal law related to the operation of an appraisal management company in this state.

Section 5. Owner requirements. (1) An appraisal management company applying for registration in this state may not be more than 10% owned by:

(a) a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated; or

(b) another entity that is more than 10% owned by a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated.

(2) Each person who owns more than 10% of an appraisal management company in this state:

(a) must be of good moral character, as determined by the board; and

(b) shall submit to a background examination as determined by the board.

(3) Each appraisal management company applying for registration in this state shall certify to the board that it has reviewed each entity that directly owns more than 10% of the appraisal management company and that no entity that directly owns more than 10% of the appraisal management company is more than 10% directly owned by any person who has had a license or certificate to act

as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state.

Section 6. Contact individual. (1) Each appraisal management company shall designate one individual as the main contact for communication between the board and the appraisal management company. An appraisal management company may designate a controlling person of the company as the contact individual.

(2) The contact individual designated pursuant to subsection (1):

(a) must hold a license or certificate to act as an appraiser in at least one state;

(b) must not have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated;

(c) must be of good moral character, as determined by the board; and

(d) shall submit to a background examination as determined by the board.

Section 7. Employee requirements. An appraisal management company may not:

(1) employ a person who may have any responsibility in ordering appraisal reports, providing quality control testing for appraisal reports, or communicating with appraisers regarding any potential appraisal report deficiencies who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation unless the license or certificate was subsequently granted or reinstated;

(2) enter into an independent contractor arrangement with a person who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation unless the license or certificate was subsequently granted or reinstated.

Section 8. Appraisal review. An employee or independent contractor of the appraisal management company that performs an appraisal review for a property located in this state:

(1) must be an appraiser licensed or certified in this state; and

(2) shall comply with the review provisions of the Uniform Standards of Professional Appraisal Practice.

Section 9. Mandatory reporting. An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board.

Section 10. Limitations. An appraisal management company registered in this state pursuant to this chapter may not enter into contracts or agreements with an individual for the performance of appraisals unless the company obtains verification that the individual is licensed or certified to perform appraisals pursuant to this chapter. Verification by reference to information published on the website of the appraisal subcommittee of the federal financial institutions examination council must be considered acceptable for purposes of compliance with this section.

Section 11. Certification to board — appraisal panel members. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that the appraisal management company

has a system and process in place to verify that all appraisers on the appraisal panel of the appraisal management company are licensed or certified in this state pursuant to this chapter.

Section 12. Certification to board — continuing licensure. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that the appraisal management company has a system in place to verify that an appraiser to whom the appraisal management company is making an assignment for the completion of an appraisal has not had a license or certification as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation since the last time that the appraisal management company made an assignment for an appraisal to the appraiser. Verification by reference to information published on the website of the appraisal subcommittee of the federal financial institutions examination council must be considered acceptable for purposes of compliance with this section.

Section 13. Certification — adherence to standards. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has a system in place to perform on an annual basis an appraisal review of the work of all appraisers who are performing appraisals for the appraisal management company on a periodic basis to validate that the appraisals are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.

Section 14. Audits. Upon renewal, not less than 10% of the appraisal management companies in this state must be subjected to a random audit. Audited appraisal management companies shall submit the recordkeeping documentation described in [section 15] for the 12-month period prior to renewal and any other documentation the board requests to validate compliance with this chapter. Any costs incurred by the board during an audit may be attributed to the appraisal management company.

Section 15. Recordkeeping. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has retained the following documentation in accordance with the recordkeeping provisions of the Uniform Standards of Professional Appraisal Practice and applicable state law:

(1) a full record as prescribed by the board that includes the names of the entities requesting service from the appraisal management company and the corresponding names of the appraisers that performed the appraisal services; and

(2) all certifications and supporting documentation for board registration and renewals, including audit reports required by this chapter.

Section 16. Appraiser independence — prohibitions. (1) An employee, director, officer, or agent of an appraisal management company registered in this state may not influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, or bribery or in any other manner, including but not limited to:

(a) withholding or threatening to withhold timely payment for an appraisal;

(b) withholding or threatening to withhold future business for an appraisal assignment or demoting or terminating or threatening to demote or terminate an appraiser;

(c) expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;

(d) conditioning the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate or opinion requested from an appraiser;

(e) requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal;

(f) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for a purchase transaction may be provided;

(g) providing stock or other financial or nonfinancial benefits to an appraiser or a person related to the appraiser;

(h) allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser; or

(i) performing any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(2) Subsection (1) may not be construed as prohibiting an appraisal management company from requesting that an appraiser:

(a) consider additional appropriate property information that falls within the original scope of work for that appraisal service;

(b) provide additional information about the basis for a valuation; or

(c) correct objective factual errors in an appraisal report.

Section 17. Guaranty of payment. Each appraisal management company registered in this state shall, except in cases of breach of contract, pay an appraiser for the completion of an appraisal or valuation assignment within 60 days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

Section 18. Alteration of appraisal report. An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser unless the alteration is mandated by federal laws, guidelines, or provisions. This section does not apply to the conversion of appraisal reports to data streams required by federal lending agencies.

Section 19. Registration. The department shall publish annually a list of appraisal management companies that have registered with the department pursuant to this chapter.

Section 20. Advertising. (1) An appraisal management company registered in this state shall disclose its registration number on its engagement letter for each appraisal assignment.

(2) An appraiser who completes work for an unregistered or suspended appraisal management company is subject to disciplinary action for unprofessional conduct. An appraiser shall list the appraisal management company's approved registration number in the body of the appraisal report.

Section 21. Unprofessional conduct. An appraisal management company engages in unprofessional conduct if it:

(1) requires an appraiser to modify any aspect of an appraisal report other than those items identified by a quality control examination, including items

that are found to be incomplete within the defined scope of work in the original assignment;

(2) requires an appraiser to prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for the specific geographic area and the appraiser has notified the appraisal management company of the issue;

(3) requires an appraiser to prepare an appraisal report under a timeframe that the appraiser, in the appraiser's professional judgment, believes does not allow the appraiser to meet all relevant legal and professional obligations and the appraiser has notified the appraisal management company of the issue;

(4) prohibits or inhibits legal and allowable communication between the appraiser and:

(a) the lender;

(b) a real estate licensee; or

(c) any other person from whom the appraiser, in the appraiser's professional judgment, believes information would be relevant;

(5) requires the appraiser to do anything that does not comply with:

(a) the Uniform Standards of Professional Appraisal Practice; or

(b) assignment conditions and certifications required by the client;

(6) makes any portion of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including but not limited to:

(a) a loan closing; or

(b) a specific dollar amount being achieved by the appraiser in the appraisal report.

Section 22. Codification instruction. [Sections 3 through 21] are intended to be codified as an integral part of Title 37, chapter 54, and the provisions of Title 37, chapter 54, apply to [sections 3 through 21].

Approved April 22, 2011

CHAPTER NO. 271

[HB 327]

AN ACT REVISING SCHOOL ADMINISTRATION LAWS; ESTABLISHING A WITHDRAWAL DATE FOR SCHOOL DISTRICT TRUSTEE ELECTIONS; PROVIDING WHO MAY ADMINISTER AN OATH OF OFFICE TO A SCHOOL DISTRICT TRUSTEE; CLARIFYING THE STATUS OF A SINGLE-MEMBER TRUSTEE DISTRICT AND A TRUSTEE NOMINATING DISTRICT IN AN ELECTION BY ACCLAMATION; REQUIRING TRUSTEES OF EACH DISTRICT TO ORGANIZE AS A GOVERNING BOARD NO LATER THAN 15 DAYS AFTER ELECTION DAY; CLARIFYING THE CALCULATION OF MAXIMUM ALLOWABLE INDEBTEDNESS FOR CERTAIN SCHOOL DISTRICTS; ELIMINATING REFERENCE TO AN INTEREST RATE ON SCHOOL DISTRICT BOND ELECTION BALLOTS; AMENDING SECTIONS 20-3-305, 20-3-307, 20-3-313, 20-3-321, 20-9-406, 20-9-426, 20-9-427, AND 20-9-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-305, MCA, is amended to read:

"20-3-305. Candidate qualification, ~~and~~ nomination, *and withdrawal.* (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 is eligible for the office of trustee.

(2) Except as provided in 20-3-338, any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy must be submitted to the clerk of the district not less than 40 days before the regular school election day at which the person is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated.

(3) (a) A candidate intending to withdraw from the election shall send a statement of withdrawal to the clerk of the district. The statement must contain all information necessary to identify the candidate and the office for which the candidate was nominated. The statement of withdrawal must be acknowledged by the clerk of the district.

(b) A candidate may not withdraw less than 38 days before a school election.

(c) Filing fees paid by the candidate may not be refunded."

Section 2. Section 20-3-307, MCA, is amended to read:

"20-3-307. Qualification and oath. (1) A person who receives a certificate of election as a trustee under the provisions of 20-3-313 or 20-20-416 may not assume the trustee position until the person has qualified. The person shall qualify by ~~completing and filing an oath of office with the county superintendent~~ *taking an oath of office administered by the county superintendent, the superintendent's designee, or any official provided for in 1-6-101 or 2-16-116. The oath must be filed with the county superintendent* not more than 15 days after the receipt of the certificate of election. After a person has qualified for a trustee position, the person holds the position until a successor has been elected or appointed and has been qualified.

(2) If the elected person does not qualify in accordance with this requirement, a person must be appointed in the manner provided by 20-3-309 and shall serve until the next regular election."

Section 3. Section 20-3-313, MCA, is amended to read:

"20-3-313. Election by acclamation — notice. (1) If the number of candidates filing for vacant positions or filing a declaration of intent to be a write-in candidate under 13-10-211 is equal to or less than the number of positions to be elected, the trustees may give notice that a trustee election will not be held. Notice must be given no later than 25 days before the election.

(2) If a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and shall issue a certificate of election to the candidate.

(3) An election for a trustee in a single-member district as provided in 20-3-338 or in a trustee nominating district as provided in 20-3-353 is considered a separate trustee election for the purposes of declaring election by acclamation as provided in this section."

Section 4. Section 20-3-321, MCA, is amended to read:

"20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular

election day and after the issuance of the election certificates to the newly elected trustees, but not later than ~~the third Saturday of May~~ *15 days after the election*. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer."

Section 5. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment. (1) (a) Except as provided in subsection (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, and any other loans or notes payable that are held as general obligations of the district, is 50% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 ~~and 20-9-502~~, and any other loans or notes payable that are held as general obligations of the district, is up to 100% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 ~~and 20-9-502~~, and any other loans or notes payable that are held as general obligations of the district, is 50% of the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 50% of the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(c), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(5) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707."

Section 6. Section 20-9-426, MCA, is amended to read:

"20-9-426. Preparation and form of ballots for bond election. (1) The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots must be prepared for each purpose.

(2) For bond elections that are not held in conjunction with a school election, the ballots for absentee voting must be printed and made available at least 30 days before the bond election.

(3) All ballots must be substantially in the following form:

OFFICIAL BALLOT

SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation or impact aid revenue) bonds of this school district in the amount of ..... dollars ($ .....), ~~bearing interest at a rate not more than ..... percent (.....%) a year,~~ payable semiannually, during a period not more than ..... years, for the purpose ..... (here state the purpose the same way as in the notice of election)?

☐ BONDS — YES.

☐ BONDS — NO."

Section 7. Section 20-9-427, MCA, is amended to read:

"20-9-427. Notice of bond election by separate purpose. (1) A school district bond election must be conducted in accordance with the school election provisions of this title, except that the election notice must be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. ..... of..... County, state of Montana, that pursuant to a certain resolution adopted at a meeting of the board of trustees of the school district held on the..... day of....., ..., an election of the registered electors of School District No..... of..... County, state of Montana, will be held on the..... day of....., ..., at..... for the purpose of voting upon the question of whether or not the trustees may issue and sell (state here: general obligation or impact aid revenue) bonds of the school district in the amount of..... dollars ($.....), ~~bearing interest at a rate not more than ..... percent (.....%) a year,~~ payable semiannually, for the purpose of..... (here state purpose). The bonds to be issued will be payable in installments over a period not exceeding..... (state number) years.

The polls will be open from..... o'clock .....m. and until..... o'clock .....m. of the election day.

Dated and posted this..... day of....., ...

.....

Presiding officer, School District No.....

of..... County

Address.....

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose must be separately stated in the notice, together with the proposed amount of bonds for each purpose.

(3) The notice must specify whether the bonds will be general obligation bonds or impact aid revenue bonds."

Section 8. Section 20-9-428, MCA, is amended to read:

"20-9-428. Determination of approval or rejection of proposition at bond election. (1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

(a) ~~If~~ *Except as provided in subsection (1)(c), if* the school district bond election is held at a regular school election or at a special election called by the trustees, the trustees shall:

(i) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for the school bond election;

(ii) determine the total number of qualified electors voting at the school bond election from the tally sheets for the election; and

(iii) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is:

(i) 40% or more, the school bond proposition is approved and adopted if a majority of the votes were cast in favor of the proposition, otherwise it is rejected;

(ii) more than 30% but less than 40%, the school bond proposition is approved and adopted if 60% or more of the votes were cast in favor of the proposition, otherwise it is rejected; or

(iii) 30% or less, the school bond proposition is rejected.

(c) If the school district bond election is held at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of the proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for the school district bond election."

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 24, 2011

CHAPTER NO. 272

[SB 135]

AN ACT AUTHORIZING THE USE OF CONTROLLED DOGS TO TRACK WOUNDED GAME ANIMALS; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-124, MCA, is amended to read:

"87-3-124. Dogs — restrictions on hunting — penalty for chasing hooved game animals — *authorization for tracking wounded game animals.* (1) (a) Except as provided in 87-3-127 and subsections (2) ~~and (3)~~ *through (4)* of this section, a person may not chase with a dog any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(c) Except as provided in ~~subsection~~ *subsections* (2) *and (4)*, any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses a dog chasing, stalking, pursuing, attacking, or killing hooved game animals may destroy that dog, on public land or on private land at the request of the landowner, without criminal or civil liability.

(d) Except as provided in ~~subsection~~ *subsections* (2) *and (4)*, a person who purposely, knowingly, or negligently permits a dog to chase, stalk, pursue,

attack, or kill hooved game animals is guilty of a misdemeanor and is subject to the penalty in 87-1-102(1). If the dog is not under the control of an adult at the time of the violation, the owner of the dog is personally responsible. A defense that the dog was allowed to run at large by another person is not allowable, unless it is shown that at the time of the violation, the dog was running at large without the consent of the owner and that the owner took reasonable precautions to prevent the dog from running at large.

(2) A person may use trained or controlled dogs to chase or herd away game animals or fur-bearing animals to protect humans, lawns, gardens, livestock, or agricultural products, including growing crops and stored hay and grain. The dog may not be destroyed pursuant to subsection (1)(c).

(3) (a) A person may hunt mountain lions during the winter open season, as established by the commission, with the aid of a dog or dogs.

(b) A person may hunt bobcats during the trapping season, as established by the commission, with the aid of a dog or dogs.

(c) A resident who possesses a Class D-3 resident hound training license may pursue mountain lions and bobcats with a dog or dogs during a training season from December 2 of each year to April 14 of the following year.

(4) (a) A person with a valid hunting license issued pursuant to Title 87, chapter 2, may use a dog to track a wounded game animal during an appropriate open season. Any person using a dog in this manner:

(i) shall maintain physical control of the dog at all times by means of a maximum 50-foot lead attached to the dog's collar or harness;

(ii) during the general season, whether handling or accompanying the dog, shall wear hunter orange material pursuant to 87-3-302;

(iii) may carry any weapon allowed by law;

(iv) may dispose of the wounded game animal using any weapon allowed by the valid hunting license; and

(v) shall immediately tag an animal that has been reduced to possession in accordance with 87-2-509.

(b) Dog handlers tracking a wounded game animal with a dog are exempt from licensing requirements under Title 87, chapter 2, as long as they are accompanied by the licensed hunter who wounded the game animal."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 22, 2011

CHAPTER NO. 273

[SB 138]

AN ACT RESTRICTING THE STATUTORY APPROPRIATION FROM THE GENERAL FUND FOR THE BOARD OF REGENTS' SHARE OF THE OPTIONAL RETIREMENT TO EMPLOYEES WHOSE COMPENSATION IS PAID FROM THE CURRENT UNRESTRICTED SUBFUND; AMENDING SECTION 19-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-21-203, MCA, is amended to read:

"19-21-203. Contributions — supplemental and plan choice rate contributions. The following provisions apply to program participants not otherwise covered under 19-21-214:

(1) (a) Each program participant shall contribute an amount equal to the member's contribution required under 19-20-602.

(b) (i) Each month, the board of regents shall calculate an amount equal to 1% of each participant's earned compensation and total the amounts calculated.

(ii) The board of regents shall allocate and deposit to the account of each participant the amount calculated for that participant under subsection (1)(b)(i). The amounts allocated under this subsection (1)(b)(ii) *to each participant whose wages or salary and benefits are paid from the current unrestricted subfund as described in 17-2-102* are statutorily appropriated, as provided in 17-7-502, to the board of regents from the general fund.

(c) The board of regents shall contribute an amount that, when added to the sum of the participant's contribution plus the contribution made under subsection (1)(b)(ii), is equal to 13% of the participant's earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) Notwithstanding the supplemental contributions required under 19-20-604 and subsection (5) of this section, the sum of the participant's contributions made under subsection (1)(a), the state's contributions made under subsection (1)(b), and the employer's contributions made under subsection (1)(c) must remain at 13% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, or by employer pickup under section 414(h)(2) of that code, 26 U.S.C. 414(h)(2), as amended.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the board of regents' contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system."

Section 2. Coordination instruction. If both House Bill No. 138 and [this act] are passed and approved, House Bill No. 138 is void.

Section 3. Effective date. [This act] is effective July 1, 2011.

Approved April 22, 2011

CHAPTER NO. 274

[SB 149]

AN ACT CREATING THE OFFENSE OF PREDATORY LOITERING APPLICABLE TO PERSONS PREVIOUSLY CONVICTED OF A SEXUAL OFFENSE; AND PROVIDING A PENALTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Predatory loitering by sexual offender. (1) A person commits the offense of predatory loitering if the person:

(a) was previously convicted of a predatory sexual offense or sexual abuse of children;

(b) purposely or knowingly loiters:

(i) in the vicinity of a residence, school, church, or place of work of the person's previous victim; or

(ii) in the vicinity of any school, park, playground, church, bicycle or multiuse path, or other place frequented by minors of an age similar to the age of the victim of the previous sexual offense if the sexual offense concerned a minor; and

(c) has previously been requested by a person in authority to:

(i) leave the area in which the person loiters; or

(ii) leave any area in which the person has loitered.

(2) Proof of the offense of predatory loitering must also include proof that the person in authority has made a report of the request to the law enforcement agency with jurisdiction over the area, and the agency has documented the report.

(3) A person convicted of the offense of predatory loitering may be fined not more than $500 or be imprisoned for not more than 6 months, or both. A person convicted of a second or subsequent offense of predatory loitering may be fined not more than $1,000 or be imprisoned for not more than 1 year, or both.

(4) As used in this section, the following definitions apply:

(a) "Person in authority" includes a peace officer or:

(i) for the purposes of a school or playground, a principal, teacher, school staff member, parent or other adult relative of a child attending the school or playground, or other supervisor of minors;

(ii) for the purposes of a church, a minister, priest, rabbi, deacon, or other ecclesiastical official, a church staff member, or a parent or other adult relative of a child attending the church;

(iii) for the purposes of a park, playground, or bicycle or multiuse path, a person specified in subsection (3)(a)(i) or a park warden, guard, or host; or

(iv) for purposes of a place of work, a person employed at the place of work.

(b) "Predatory sexual offense" has the meaning provided in 46-23-502.

(c) "Sexual abuse of children" means commission of the offense provided in 45-5-625.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [section 1].

Approved April 22, 2011

CHAPTER NO. 275

[SB 327]

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REPORT TO THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE AND THE WATER POLICY INTERIM COMMITTEE ON FEASIBILITY STUDIES CURRENTLY

REQUIRED UNDER LAW TO ASSESS WATER PROJECTS OWNED OR CONTROLLED BY THE STATE FOR ELECTRICITY GENERATION POTENTIAL; CLARIFYING THE ECONOMIC FEASIBILITY CRITERIA THAT THE DEPARTMENT IS REQUIRED TO CONSIDER IN STUDYING PROJECTS; AMENDING SECTION 85-1-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-501, MCA, is amended to read:

"85-1-501. Survey of power generation capacity. *(1)* The department shall study the economic and environmental feasibility of constructing and operating a small-scale hydroelectric power generating facility on each of the water projects under its control and shall periodically update ~~such~~ *those* studies as the cost of the electrical energy increases. In determining whether small-scale hydroelectric generation may be economically feasible on a particular project, the department shall consider:

~~(1)~~*(a)* the estimated cost of construction of a facility;

~~(2)~~*(b)* the estimated cost of maintaining, repairing, and operating the facility;

~~(3)~~*(c)* the estimated cost of tying into an existing power distribution channel;

~~(4)~~*(d)* the ability of public utilities or rural electric cooperatives to lease and operate such a facility;

~~(5)~~*(e)* the debt burden to be serviced;

~~(6)~~*(f)* the revenue expected to be derived; ~~and~~

~~(7)~~*(g)* the likelihood of a reasonable rate of return on the investment*; and*

(h) the potential impacts on water supply and streamflows.

(2) Prior to September 1 of each even-numbered year, the department shall update the energy and telecommunications interim committee and the water policy interim committee on all past and current studies conducted pursuant to this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 22, 2011

CHAPTER NO. 276

[SB 382]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE CERTAIN INFORMATION CONCERNING CENTRALLY ASSESSED PROPERTY TO TAXPAYERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Taxpayer right to know — centrally assessed property. (1) The department shall, in the course of valuing properties, post on its website 30 days prior to the issuance of current year assessment notices the capitalization rate or rates to be used by the department to determine the income indicators of value for centrally assessed property, including supporting information on capitalization studies. The supporting information must include the rationale for adding or deleting a company or property from those included in the study in the prior year.

(2) The department shall display a statement on its website that it will accept comments on the current year capitalization rates and information as

provided in subsection (1) for 20 days after posting. The department shall consider the comments prior to issuing the current year assessment notices and shall post a response to each written comment within 20 days of the close of the comment period.

(3) The department shall include all underlying computations when providing a taxpayer with a determination of valuation.

(4) If the department changes its reliance on any indicator of value by more than 15% from the previous year, the department shall provide the taxpayer with a written explanation of the rationale for the change when issuing an initial or final determination of valuation to a taxpayer.

(5) Nothing in this section may be construed as affecting an appraisal judgment.

(6) Inaccuracy or inadequacy of compliance with this section does not invalidate a determination of value or provide independent grounds for appeal.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 1].

Approved April 22, 2011

CHAPTER NO. 277

[SB 389]

AN ACT ALLOWING A BREWERY TO IMPORT OR PURCHASE NECESSARY NONBEVERAGE INGREDIENTS CONTAINING ALCOHOL AS INGREDIENTS FOR BLENDING OR MANUFACTURING PURPOSES; REQUIRING THE DEPARTMENT OF REVENUE TO ESTABLISH CONDITIONS FOR THE IMPORTATION OR PURCHASE; PROVIDING THAT THE NONBEVERAGE INGREDIENTS FOR USE BY A BREWERY AND DISTILLED SPIRIT INGREDIENTS FOR A DISTILLERY OR A MICRODISTILLERY ARE EXEMPT FROM STATE TAXES AND MARKUP; DECREASING THE MINIMUM ALCOHOL CONTENT APPLICABLE TO DISTILLERIES; AND AMENDING SECTIONS 16-1-401, 16-1-404, 16-3-214, AND 16-4-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-401, MCA, is amended to read:

"16-1-401. Liquor excise tax. (1) ~~The~~ *Except as provided in subsection (3), the* department shall collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at a rate that is the percent of the retail selling price determined in accordance with the following schedule based on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed the liquor and sold the specified number of proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section:

Nationwide production	Tax rate
Less than 20,000 proof gallons	3%
20,000 to 50,000 proof gallons	8%
50,001 to 200,000 proof gallons	13.8%
Over 200,000 proof gallons	16%

(2) The department shall retain the amount of the excise tax received in a separate account and shall, in accordance with the provisions of 17-2-124, deposit, to the credit of the general fund, the amount collected and received not later than the 10th day of each month.

(3) The following are exempt from the tax imposed by this section:

(a) flavors and other nonbeverage ingredients containing alcohol that are imported or purchased by a brewery under conditions set by the department as provided in 16-3-214; and

(b) necessary distilled spirits imported in bulk for use by a distillery or microdistillery under conditions set by the department as provided in 16-4-311 and 16-4-312."

Section 2. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor — amount — distribution of proceeds. (1) ~~The~~ *Except as provided in subsection (4), the* department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons but not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(c) 2% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor produced in or brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of 17-2-124, shall allocate the revenue as follows:

(a) Thirty-four and one-half percent is allocated to the state general fund.

(b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(3) The license tax proceeds that are allocated to the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency must be credited quarterly to the department of public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol and chemical dependency programs. The remainder must be distributed as provided in 53-24-206.

(4) The following are exempt from the tax and markup imposed by this section:

(a) flavors and other nonbeverage ingredients containing alcohol that are imported or purchased by a brewery under conditions set by the department as provided in 16-3-214; and

(b) necessary distilled spirits imported in bulk for use by a distillery or microdistillery under conditions set by the department as provided in 16-4-311 and 16-4-312."

Section 3. Section 16-3-214, MCA, is amended to read:

"16-3-214. Beer sales by brewers — sample room exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery to:

(i) a wholesaler;

(ii) licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver the beer and if:

(A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day to each licensed retailer; and

(B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels a year; or

(iii) the public;

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) A brewery may not use a common carrier for delivery of the brewery's product to the public or to licensed retailers.

(3) A brewery may import or purchase, upon terms and conditions the department may require, necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing purposes.

~~(3)~~*(4)* An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

~~(4)~~*(5)* This section does not prohibit a licensed brewer from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

Section 4. Section 16-4-311, MCA, is amended to read:

"16-4-311. Distillery license. (1) The department may, upon receipt of an application, issue a distillery license to a person who is authorized under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, to distill, rectify, bottle, and process liquor. A licensee may import, manufacture, distill, rectify, blend, denature, and store spirits of an alcoholic content greater than ~~17%~~ *0.5%* alcohol by ~~weight~~ *volume* for sale to the department or as provided in 16-4-312 and may transport the liquor out of this state for sale outside this state. Distillery licensees must be permitted to purchase, from and through the department, alcoholic beverages for blending and manufacturing purposes upon terms and conditions that the department

may provide. A licensee may not sell any alcoholic beverage within this state except to the department or as provided in 16-4-312.

(2) An agricultural producer or association of agricultural producers or legal agents who manufacture and convert agricultural surpluses, byproducts, or wastes into denatured ethyl and industrial alcohol for purposes other than human consumption are not required to obtain a distillery license from the department."

Approved April 22, 2011

CHAPTER NO. 278

[HB 618]

AN ACT ESTABLISHING PROPERTY TAX EXEMPTIONS FOR CERTAIN PROPERTY OWNED BY FEDERALLY RECOGNIZED INDIAN TRIBES; AMENDING SECTIONS 15-6-201, 41-3-201, 61-3-321, AND 61-10-214, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Governmental, charitable, and educational categories — exempt property. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

(iv) municipal corporations;

(v) public libraries;

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33; ~~and~~

(vii) special districts created pursuant to Title 7, chapter 11, part 10; *and*

(viii) subject to subsection (2), federally recognized Indian tribes in the state if the property is located entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is used exclusively by the tribe for essential government services. Essential government services are tribal government administration, fire, police, public health, education, recreation, sewer, water, pollution control, public transit, and public parks and recreational facilities.

(b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed

15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;

(c) land and improvements upon the land, not to exceed 15 acres, owned by a federally recognized Indian tribe when the land has been set aside by tribal resolution and designated as sacred land to be used exclusively for religious purposes;

~~(c)~~*(d)* property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;

~~(d)~~*(e)* property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:

(i) is not operated for gain or profit;

(ii) has an attendance policy; and

(iii) has a definable curriculum with systematic instruction;

(f) property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities if the property meets the requirements of subsection (1)(e);

~~(e)~~*(g)* property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

~~(f)~~*(h)* property that is:

(i) *(A)* owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21; *or*

(B) owned by a federally recognized Indian tribe within the state and set aside by tribal resolution; and

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and not operated for gain or profit;

~~(g)~~*(i)* subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

~~(h)~~*(j)* evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

~~(i)~~*(k)* public museums, art galleries, zoos, and observatories that are not operated for gain or profit;

~~(j)~~*(l)* motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

~~(k)~~*(m)* the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

~~(l)~~*(n)* (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and

~~(m)~~*(o)* property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection ~~(1)(m)~~ *(1)(o)*, "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(2) *(a) (i) For the purposes of tribal property under subsection (1)(a)(viii), the property subject to exemption may not be:*

(A) operated for gain or profit;

(B) held under contract to operate, lease, or sell by a taxable individual;

(C) used or possessed exclusively by a taxable individual or entity; or

(D) held by a tribal corporation except for educational purposes as provided in subsection (1)(f).

(ii) For the purposes of parks and recreational facilities under subsection (1)(a)(viii), the property must be:

(A) set aside by tribal resolution and designated as park land, not to exceed 15 acres, or be designated as a recreational facility; and

(B) open to the general public.

~~(a)~~*(b)* For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal Internal Revenue Code:

(i) an ordained minister, priest, or rabbi;

(ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;

(iii) a member of a religious order who has taken a vow of poverty; or

(iv) a Christian Science practitioner.

~~(b)~~*(c)* For the purposes of subsection ~~(1)(g)~~ *(1)(i)*:

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue

Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

(iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.

~~(c)~~*(d)* For the purposes of subsection ~~(1)(i)~~ *(1)(k)*, the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display."

Section 2. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

(a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;

(f) a foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) a member of the clergy, as defined in 15-6-201~~(2)(a)~~*(2)(b)*;

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or

(j) an employee of an entity that contracts with the department to provide direct services to children.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

(4) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(5) (a) Except as provided in subsection (5)(b) or (5)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(6) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Section 3. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (19):

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(a) if the vehicle is 4 or less years old, $217;

(b) if the vehicle is 5 through 10 years old, $87; and

(c) if the vehicle is 11 or more years old, $28.

(3) Except as provided in subsection (14), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

(a) if the declared weight is less than 6,000 pounds, $61.25; or

(b) if the declared weight is 6,000 pounds or more, $148.25.

(4) Except as provided in subsection (14), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) Except as provided in subsection (14), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is $61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

(i) a one-time registration fee of $237.50;

(ii) unless a new set of license plates is being issued, an insurance verification fee of $5, which must be deposited in the account established under 61-6-158; and

(iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection (14), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection (14), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, $72; and

(b) 16 feet in length or longer, $152.

(10) Except as provided in subsection (14), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(11) (a) Except as provided in subsections (11)(b) and (14), the one-time registration fee for a snowmobile is $60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of $40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of $20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) (a) Except as provided in subsection (12)(b), a fee of $10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The $10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of $15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection (12) must be deposited in the account established under 61-6-158, except that $2 of the fee imposed in subsection (12)(a) must be deposited in the state general fund.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), ~~(1)(c)~~ *(1)(d)*, ~~(1)(d)~~ *(1)(e)*, ~~(1)(e)~~ *(1)(g)*, ~~(1)(f)~~ *(1)(h)*, ~~(1)(g)~~ *(1)(i)*, ~~(1)(i)~~ *(1)(k)*, ~~(1)(j)~~ *(1)(l)*, ~~(1)(l)~~ *(1)(n)*, or ~~(1)(m)~~ *(1)(o)*, 15-6-203, or 15-6-215, except as provided in 61-3-520.

(14) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of $4 must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the $4 fee, the department of fish, wildlife, and parks shall use $3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 4. Section 61-10-214, MCA, is amended to read:

"61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state when those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a dealer's or wholesaler's plate as provided in 61-4-102 and 61-4-125 are exempt from this part for a period not to exceed 7 days when moving to or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), ~~(1)(c)~~ *(1)(d)*, ~~(1)(d)~~ *(1)(e)*, ~~(1)(e)~~ *(1)(g)*, ~~(1)(f)~~ *(1)(h)*, ~~(1)(g)~~ *(1)(i)*, ~~(1)(i)~~ *(1)(k)*, ~~(1)(j)~~ *(1)(l)*, ~~(1)(l)~~ *(1)(n)*, or ~~(1)(m)~~ *(1)(o)* or 15-6-228(4) are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption."

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Applicability. [This act] applies to tax years beginning after December 31, 2011.

Approved April 27, 2011

CHAPTER NO. 279

[SB 59]

AN ACT PROVIDING FOR A MURAL THAT HONORS THE HISTORY OF MONTANA WOMEN AS COMMUNITY BUILDERS; AMENDING SECTION 2-17-808, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the art work decorating the Montana capitol conveys a narrative of the history of Montana and the significance of its government; and

WHEREAS, this ground we call Montana, on which Native American women met women from Europe, Asia, and Africa, bears the marks of generations of women's labor visible in the remains of tipi rings and homestead gardens, in the presence of one-room schools and university classrooms, in the storefronts of small businesses, and in the offices of corporations; and

WHEREAS, we know our culture through the stories of women like Pretty Shield, Mourning Dove, Dorothy Johnson, and Mildred Walker, through the beadwork, star quilts, pasties, and povitica made by thousands of women in homes across the state, and through the dozens of languages spoken by mothers to children on reservations and in immigrant communities that formed the fabric of Montana; and

WHEREAS, women in communities across Montana have pioneered the social institutions we now consider a part of community life because they stepped outside domestic roles to found libraries, museums, theaters, parks, playgrounds, schools, shelters, hospitals, labor unions, and social clubs; and

WHEREAS, women in Montana fought for and won the right to vote in 1914, 6 years before the passage of the Nineteenth Amendment to the U.S. Constitution, helped to send the first woman in American history to the U.S. Congress, have served and continue to serve in every branch of local, state, and tribal government, and have eloquently represented views across the entire spectrum of American politics; and

WHEREAS, with few exceptions, this story of Montana's past is not represented in the capitol's art, and a mural commemorating Montana women's contribution to the history and government of the state would enrich and more accurately tell Montana's story to its citizens and visitors alike.

Be it enacted by the Legislature of the State of Montana:

Section 1. Creation of mural to honor women. (1) The capitol complex advisory council shall form a subcommittee, which may consist of council and noncouncil members, for the creation and placement of a mural to honor the historical contributions of women as community builders. Subcommittee members shall serve without additional compensation or reimbursement.

(2) The subcommittee shall:

(a) commission, through a competitive process, a qualified artist to create the mural described in subsection (3);

(b) solicit gifts, grants, and donations for the mural's creation and placement; and

(c) recommend to the council a specific location for the mural, which must be placed as provided in 2-17-808.

(3) The mural provided for in this section:

(a) must portray women in a manner that reflects a historical theme honoring Montana women as community builders in diverse roles, such as the center of the family, mothers, grandmothers, business leaders, educators, health care providers, and scientists;

(b) may not portray actual historical women, but must portray anonymous, unsung Montana heroines; and

(c) must be created in an artistic style consistent with the genre of artwork already in the capitol.

(4) The design, installation, maintenance, and funding of the mural is subject to provisions of the art and memorial plan adopted by the council pursuant to 2-17-804.

Section 2. Section 2-17-808, MCA, is amended to read:

"2-17-808. Placement of certain busts, plaques, statues, memorials, monuments, and art displays. (1) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, the 1972 Montana constitutional convention, and the women legislators' centennial;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

(d) the statues of:

(i) Wilbur Fiske Sanders;

(ii) Jeannette Rankin; and

(iii) Mike and Maureen Mansfield;

(e) the Montana statehood centennial bell;

(f) the gallery of outstanding Montanans;

(g) the Montana constitutional exhibit; ~~and~~

(h) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors*; and*

(i) a mural honoring the historical contributions of women as community builders.

(2) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the statues of Thomas Francis Meagher and Lady Liberty;

(b) the plaques commemorating:

(i) Donald Nutter;

(ii) President George H. W. Bush; and

(iii) American prisoners of war and personnel of the United States armed services missing in action;

(c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;

(d) the Montana centennial square; and

(e) the monument of the ten commandments.

(3) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:

(a) the statue by Robert Scriver entitled "symbol of the pros";

(b) the monuments to the liberty bell, the veterans' and pioneer memorial building—landscape beautification project, Montana veterans, ~~and~~ Pearl Harbor survivors, and the peace pole;

(c) the sculptures of the herd bull and the eagle;

(d) the plaques commemorating the Montana national guard and Lewis and Clark; and

(e) the arrastra.

(4) The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:

(a) the paintings of Dr. W. F. Cogswell and the paintings entitled "burning bush", "dryland farmer", "farm girl", "the river rat", "top of the world", "angus #68", "the source", "the Bozeman trail", and "the Mullan road";

(b) the art displays known as "Montana workers—mining, ranching, and building", "copper city rodeo", "dancing cascade", "save a piece of the sky", and "night light";

(c) the plaque commemorating Walt Sullivan, the plaque of the Sam W. Mitchell building, and the plaque commemorating the original headquarters of the Montana highway patrol;

(d) the busts of Lee Metcalf and Sam W. Mitchell; and

(e) the plaque and Lou Peters award commemorating Karl Ohs.

(5) The senate sculpture depicting the Lewis and Clark expedition is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.

(6) The council shall determine the specific placement of the items identified in subsections (1) through (4)."

Section 3. Contingent voidness. If the capitol complex advisory council determines that the mural provided for in [section 1] cannot be accomplished pursuant to the criteria established in [section 1] within 5 years of [the effective date of this act], then [section 2] is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2011

CHAPTER NO. 280

[SB 319]

AN ACT REVISING CHILD SAFETY RESTRAINT STANDARDS; WAIVING THE FINE FOR VIOLATION OF THE CHILD RESTRAINT REQUIREMENT UNDER CERTAIN CONDITIONS; ELIMINATING THE SECONDARY ENFORCEMENT RESTRICTION FOR CERTAIN RESTRAINT VIOLATIONS; AMENDING SECTIONS 61-9-420, 61-9-423, AND 61-13-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-420, MCA, is amended to read:

"61-9-420. Child safety restraint systems — standards — exemptions. (1) If a child under 6 years of age and weighing less than 60 pounds is a passenger in a motor vehicle, that motor vehicle must be equipped with one child safety restraint for each child in the vehicle and each child must be properly restrained. *The child safety restraint must be appropriate for the height and weight of the child as indicated by manufacturer standards.*

(2) The department shall by rule establish standards in compliance with 61-9-419 through 61-9-423 and applicable federal standards for approved types of child safety restraint systems.

(3) The department may by rule exempt from the requirements of subsection (1) a child who because of a physical or medical condition or body size cannot be placed in a child safety restraint."

Section 2. Section 61-9-423, MCA, is amended to read:

"61-9-423. Penalty. *(1)* ~~Violation~~ *Except as provided in subsection (2), violation* of 61-9-420 is punishable by a fine of not more than $100.

(2) The fine provided for in subsection (1) must be waived if proof of acquisition of an appropriate child safety restraint is presented within 7 days of the violation to the office of the charging officer and there has been no previous dismissal of a violation of 61-9-420 under this subsection."

Section 3. Section 61-13-103, MCA, is amended to read:

"61-13-103. Seatbelt use required — exceptions. (1) A driver may not operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt or, if 61-9-420 applies, is properly restrained in a child safety restraint.

(2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, that the occupant is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle or a motor-driven cycle;

(d) an occupant of a vehicle licensed as special mobile equipment; or

(e) an occupant who makes frequent stops with a motor vehicle during official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection (2)(e).

(4) The department or its agent may not require a driver who may be in violation of this section to stop except*:*

(a) upon reasonable cause to believe that the driver has violated another traffic regulation or that the driver's vehicle is unsafe or not equipped as required by law*; or*

(b) if a person in the vehicle who is under 6 years of age and weighs less than 60 pounds is not properly restrained under 61-9-420 or this section."

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved April 27, 2011

CHAPTER NO. 281

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary and ordinary expenditures for the fiscal year ending June 30, 2011. The unspent balance of any appropriation must revert to the appropriate fund.

Section 2. Appropriations — authorization to expend money. The following money is appropriated, subject to the terms and conditions of [section 1]:

Agency and Program	Amount	Fund
Commissioner of Political Practices		
Hearing and Legal Costs	$88,500	General Fund
Office of Public Instruction		
Pupil Transportation	$510,000	General Fund
State Tuition Payments	$356,000	General Fund
Office of State Public Defender		
Public Defender	$1,200,000	General Fund
Death Penalty Cases	$150,000	General Fund
Department of Administration		
Health Care and Benefits	$470,767	General Fund
Montana Lottery	$950,000	Proprietary Fund

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2011

CHAPTER NO. 282

[SB 15]

AN ACT ESTABLISHING THE OFFENSE OF AGGRAVATED DRIVING UNDER THE INFLUENCE; PROVIDING PENALTIES; AMENDING SECTIONS 61-8-101, 61-8-402, 61-8-404, 61-8-409, 61-8-714, 61-8-722, 61-8-731, AND 61-8-734, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Aggravated DUI. (1) A person commits the offense of aggravated driving under the influence if the person is in violation of 61-8-401 or 61-8-406 and at the time of the offense:

(a) the person's blood alcohol concentration is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of 61-8-401, 61-8-402, or 61-8-406;

(d) the person refuses to provide a breath or blood sample as required in 61-8-402 and the person's driver's license or privilege to drive was suspended, canceled, or revoked under 61-8-402 within 10 years of the commission of the present offense; or

(e) the person has one prior conviction or pending charge for a violation of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or this section within 3 years of the commission of the present offense, or two or more prior convictions or pending charges, or any combination thereof, for violations of 45-5-106, 45-5-205, 61-8-401, 61-8-406, or this section within 7 years of the commission of the present offense.

(2) A person convicted of the offense of aggravated driving under the influence shall be punished by:

(a) a fine of $1,000; and

(b) a term of imprisonment of not more than 1 year, part of which may be suspended, except for the mandatory minimum sentences set forth in 61-8-714.

(3) During the suspended sentence imposed by the court under subsection (2)(b):

(a) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts if available;

(b) the person is subject to all conditions of the 24/7 sobriety program if available and if imposed by the court; and

(c) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(4) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

Section 2. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application — exceptions. (1) As used in this chapter, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401(1)(b), (1)(c), and (2), with regard to operating a vehicle while under the influence of drugs, apply anywhere within this state;

(c) the provisions of 61-8-301 and 61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, ~~and~~ 61-8-402 through 61-8-405, *and [section 1],* with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of

any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 3. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401 *or [section 1]*;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; ~~or~~

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death*; or*

(C) in violation of [section 1].

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

Section 4. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, *[section 1],* or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Section 5. Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 *or [section 1]*.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through (8) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

Section 6. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) Except as provided in subsection (4) *or (5)*, a person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than $300 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 12 months and by a fine of not less than $600 or more than $2,000. The initial 24 hours of the imprisonment term must be served and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) Except as provided in subsection (4) *or (5)*, on a second conviction, the person shall be punished by a fine of not less than $600 or more than $1,000 and by imprisonment for not less than 7 days or more than 6 months, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine of not less than $1,200 or more than $2,000 and by imprisonment for not less than 14 days or more than 12 months. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(3) Except as provided in subsection (4) *or (5)*, on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than $1,000 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than 12 months and by a fine of not less than $2,000 or more than $10,000. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the person.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.

(5) If the person has a prior conviction or pending charge for a violation of [section 1], the person shall be punished as provided in [section 1]."

Section 7. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration — first through third offense. (1) Except as provided in subsection (4) *or (5)*, a person convicted of a violation of 61-8-406 shall be punished by imprisonment

for not more than 10 days and by a fine of not less than $300 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 20 days and by a fine of not less than $600 or more than $2,000.

(2) Except as provided in subsection (4) *or (5)*, on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days, which may not be served on home arrest, or more than 60 days and by a fine of not less than $1,200 or more than $2,000. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended.

(3) Except as provided in subsection (4) *or (5)*, on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home arrest, or more than 6 months and by a fine of not less than $1,000 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 20 days, which may not be served on home arrest, or more than 12 months and by a fine of not less than $2,000 or more than $10,000. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended.

(4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive alcohol concentration.

(5) If the person has a prior conviction or pending charge for a violation of [section 1], the person shall be punished as provided in [section 1]."

Section 8. Section 61-8-731, MCA, is amended to read:

"**61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense.** (1) Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 ~~and~~*,* the person has either a single conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, ~~or~~ 61-8-406*, or [section 1],* and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than $1,000 or more than $10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, ~~or~~ 61-8-406*, or [section 1],* and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than $1,000 or more than $10,000, or both.

(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of assigned counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).

(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 9. Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in *[section 1],* 61-8-714, 61-8-722, or 61-8-731, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, 61-8-722, or 61-8-731 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 1].

Section 11. Coordination instruction. If House Bill No. 106 is not passed and approved, then [section 1(3)(b) of this act] is void.

Section 12. Effective date. [This act] is effective on passage and approval.

Section 13. Applicability — retroactive applicability. (1) [This act] applies to offenses committed on or after [the effective date of this act].

(2) For the purpose of determining the number of prior refusals to submit to testing under 61-8-402 and of convictions for prior offenses referred to in [section 1], [this act] applies retroactively, within the meaning of 1-2-109, to

refusals made and to violations of 45-5-106, 45-5-205, 61-8-401, or 61-8-406 committed prior to [the effective date of this act].

Approved April 28, 2011

CHAPTER NO. 283

[SB 42]

AN ACT REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, 61-8-405, AND 61-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-5-224, MCA, is amended to read:

"46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence*, including blood samples that may yield evidence of any measured amount or detected presence of alcohol or drugs in a person's body when subjected to testing*;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained."

Section 2. Section 61-8-402, MCA, is amended to read:

"61-8-402. ~~Blood~~ *Implied consent — blood* or breath tests for alcohol, drugs, or both — *refusal to submit to test — administrative license suspension*. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given~~, but~~ *except as provided in subsection (5), but* the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection ~~(6)~~ *(7)*.

(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, or 61-8-406 or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

~~(5)~~*(6)* Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

~~(6)~~*(7)* (a) Except as provided in subsection ~~(6)(b)~~ *(7)(b)*, the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection ~~(6)(b)~~ *(7)(b)*.

~~(7)~~*(8)* A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

~~(8)~~*(9)* The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or

an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

~~(9)~~*(10)* A suspension under this section is subject to review as provided in this part.

~~(10)~~*(11)* This section does not apply to ~~blood and breath~~ tests, samples, and analyses *of blood or breath* used for purposes of medical treatment or care of an injured motorist, ~~or~~ related to a lawful seizure for a suspected violation of an offense not in this part*, or performed pursuant to a search warrant*.

(12) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

Section 3. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests ~~as provided in this section~~ *under 61-8-402, whether or not a sample was subsequently collected for any purpose*, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Section 4. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse~~,~~ may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse~~,~~ does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406, 61-8-410, or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

Section 5. Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given *except as provided in 61-8-402(5).* However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through ~~(8)~~ *(9)* that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [This act] applies to violations of Title 61, chapter 8, part 4, that occur on or after [the effective date of this act].

Approved April 28, 2011

CHAPTER NO. 284

[SB 238]

AN ACT INCREASING JURISDICTIONAL LIMITS FOR JUSTICES' COURTS, CITY COURTS, AND SMALL CLAIMS COURTS; AMENDING SECTIONS 3-10-301, 3-10-1004, 3-11-103, 7-1-4151, 25-35-502, 25-35-503, 25-35-606, AND 75-7-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed ~~$7,000~~ *$12,000*, exclusive of court costs *and attorney fees*;

(b) in actions for damages not exceeding ~~$7,000~~ *$12,000*, exclusive of court costs *and attorney fees*, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding ~~$7,000~~ *$12,000*, exclusive of court costs *and attorney fees*, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed ~~$7,000~~ *$12,000*;

(e) in actions for a fine, penalty, or forfeiture not exceeding ~~$7,000~~ *$12,000* imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions for a fine, penalty, or forfeiture not exceeding ~~$7,000~~ *$12,000* imposed by a statute or assessed by an order of a conservation district for violation of Title 75, chapter 7, part 1;

(g) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed ~~$7,000~~ *$12,000*, though the penalty may exceed that sum;

(h) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed ~~$7,000~~ *$12,000*, exclusive of court costs *and attorney fees*;

(i) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided in Title 40, chapter 15;

(j) to issue orders to restore streams under Title 75, chapter 7, part 1, or to require payment of the actual cost for restoration of a stream if the restoration does not exceed ~~$7,000~~ *$12,000*.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 2. Section 3-10-1004, MCA, is amended to read:

"3-10-1004. Jurisdiction — removal from district court. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed ~~$3,000~~ *$7,000*, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~$3,000~~ *$7,000*. The small claims court shall hear any action so removed from the district court."

Section 3. Section 3-11-103, MCA, is amended to read:

"3-11-103. Exclusive jurisdiction. Except as provided in 3-11-104, the city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed ~~$5,000~~ *$9,500*, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds; and

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed ~~$5,000~~ *$9,500*;

(4) when the amount claimed, exclusive of costs, does not exceed ~~$5,000~~ *$9,500*, actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract when the city or town is a party or is in any way interested;

(c) damages when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed ~~$5,000~~ *$9,500*; and

(6) actions for the collection of a license fee required by an ordinance of the city or town."

Section 4. Section 7-1-4151, MCA, is amended to read:

"7-1-4151. Municipal infractions — proceedings. (1) In municipal infraction proceedings:

(a) the matter must be tried before a municipal court judge or city court judge in the same manner as a small claim if the total amount of civil penalties does not exceed ~~$3,000~~ *$7,000*. The matter may only be tried before a judge in district court if the total amount of civil penalties assessed exceeds ~~$3,000~~ *$7,000*.

(b) the city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof must be by clear and convincing evidence.

(c) the court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the municipality and produce evidence or witnesses on the defendant's behalf.

(d) the defendant may be represented by counsel of the defendant's own choosing and at the defendant's own expense;

(e) the defendant may answer by admitting or denying the infraction;

(f) if a municipal infraction is proven, the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss the charges. Each day that a violation occurs or is permitted to exist by the defendant constitutes a separate infraction.

(2) All penalties or forfeitures collected by the court for municipal infractions must be remitted to the municipality in the same manner as fines and forfeitures collected for criminal offenses. If the person named in the citation is served as provided in 7-1-4150 and fails without good cause to appear in response to the civil citation, judgment must be entered against the person.

(3) A person against whom judgment is entered shall pay court costs and fees as in small claims court under Title 25, chapter 35. If the action is dismissed by the court, the municipality is liable for the court costs and court fees.

(4) Seeking a civil penalty as authorized in this section does not preclude a municipality from seeking alternative relief from the court in the same action.

(5) When judgment has been entered against a defendant, the court may do any of the following:

(a) impose a civil penalty by entry of a judgment against the defendant;

(b) direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court;

(c) grant appropriate alternative relief ordering the defendant to abate or cease the violation;

(d) authorize the municipality to abate or correct the violation;

(e) order that the municipality's costs for abatement or correction of the violation be entered as a judgment against the defendant or assessed against the property where the violation occurred, or both.

(6) If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt."

Section 5. Section 25-35-502, MCA, is amended to read:

"25-35-502. Jurisdiction. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed ~~$3,000~~ *$7,000*, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount claimed does not exceed ~~$3,000~~ *$7,000*."

Section 6. Section 25-35-503, MCA, is amended to read:

"25-35-503. Removal from district court. A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~$3,000~~ *$7,000*. The small claims court shall hear any action so removed from the district court."

Section 7. Section 25-35-606, MCA, is amended to read:

"25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service must be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed ~~$2,500~~ *$6,500*. If a counterclaim or setoff is asserted in excess of ~~$2,500~~ *$6,500*, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged, leaving the defendant to prosecute the balance of the defendant's claim in an appropriate justice or district court action.

(3) The counterclaim must be made in substantially the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF..... COUNTY, MONTANA
BEFORE ....., JUSTICE OF THE PEACE

.....
Plaintiff
vs. Counterclaim
..... Case No. .....
.....
Defendant(s)

.....

.....Comes now the defendant, being first duly sworn, and alleges that the defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of $....., for .....

.....

.....

which sum is now due, together with defendant's costs expended in this action.

Dated this ..... day of ....., 20...

.....
Defendant

.....
Defendant's address

Subscribed and sworn to before me this..... day of....., 20...

.....
Justice of the peace
By: .....
Clerk, small claims division"

Section 8. Section 75-7-123, MCA, is amended to read:

"75-7-123. Penalties — restoration. (1) A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is:

(a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500; or

(b) subject to a civil penalty not to exceed $500 for each day that person continues to be in violation.

(2) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.

(3) In addition to a fine or a civil penalty under subsection (1), the person:

(a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible; or

(b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed ~~$7,000~~ *$12,000*. If the amount of liability for restoration exceeds ~~$7,000~~ *$12,000*, then the action must be brought in district court.

(4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds

provided for in 76-15-523, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601."

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved April 28, 2011

CHAPTER NO. 285

[SB 333]

AN ACT CONFORMING MONTANA LAW TO THE 2008 AMENDMENTS TO THE UNIFORM PRINCIPAL AND INCOME ACT; CHANGING THE MARITAL DEDUCTION REQUIREMENTS TO ALLOW A TRUST TO QUALIFY FOR THE FEDERAL MARITAL DEDUCTION REQUIREMENTS; PROVIDING FOR THE ALLOCATION OF TAXABLE INCOME FOR THE DETERMINATION OF TAXES ON UNDISTRIBUTED ENTITY TAXABLE INCOME; PROVIDING A TRANSITION PROVISION; AMENDING SECTIONS 72-34-441 AND 72-34-452, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-34-441, MCA, is amended to read:

"72-34-441. Payments characterized as interest or dividend — allocation to income — allocation of other payments — excess allocation to income in order to obtain estate tax marital deduction. (1) In this section~~,~~*:*

(a) ~~"payment"~~ *"Payment"* means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer~~, including~~. *For purposes of subsections (4), (5), (6), and (7), the term also includes any payment from any separate fund, regardless of the reason for the payment.*

(b) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest*,* ~~or~~ a dividend*,* or a payment made in lieu of interest or a dividend, a trustee shall allocate ~~it~~ *the payment* to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

~~(4) If, to obtain an estate tax marital deduction for a trust, a trustee allocates more of a payment to income than provided by this section, the trustee shall~~

~~allocate to income the additional amount necessary to obtain the marital deduction.~~

(4) Except as otherwise provided in subsection (5), subsections (6) and (7) apply and subsections (2) and (3) do not apply in determining the allocation of a payment made from a separate fund to:

(a) a trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code, 26 U.S.C. 2056(b)(7), as amended, has been made; or

(b) a trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code, 26 U.S.C. 2056(b)(5), as amended.

(5) Subsections (4), (6), and (7) do not apply if and to the extent that the series of payments would, without the application of subsection (4), qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code, 26 U.S.C. 2056(b)(7)(C), as amended.

(6) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this part. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(7) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 3% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code, 26 U.S.C. 7520, as amended, for the month preceding the accounting period for which the computation is made.

~~(5)~~*(8)* This section does not apply to payments to which 72-34-442 applies."

Section 2. Section 72-34-452, MCA, is amended to read:

"72-34-452. Payment of taxes. (1) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid ~~proportionately as follows~~:

(a) from income to the extent that receipts from the entity are allocated *only* to income;

(b) from principal to the extent that ~~both of the following apply:~~

~~(i)~~ receipts from the entity are allocated *only* to principal; ~~and~~

~~(ii) the trust's share of the entity's taxable income exceeds the total receipts described in subsection (3)(a) and subsection (3)(b)(i).~~

(c) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(d) from principal to the extent that the tax exceeds the total receipts from the entity.

(4) ~~For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.~~ *After applying subsections (1) through (3), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.*"

Section 3. Transitional matters. Section 72-34-441, as amended by [section 1], applies to a trust described in 72-34-441(4) on and after the following dates:

(1) if the trust is not funded as of [the effective date of section 1], the date of the decedent's death;

(2) if the trust is initially funded in the calendar year beginning January 1, 2012, the date of the decedent's death; or

(3) if the trust is not described in subsection (1) or (2), January 1, 2012.

Section 4. Effective date. [This act] is effective January 1, 2012.

Approved April 28, 2011

CHAPTER NO. 286

[SB 347]

AN ACT REQUIRING NOTICE OF PROPOSED AGENCY PRIVATE PROPERTY ASSESSMENTS TO THE PUBLIC AND INTERESTED PERSONS THROUGH E-MAIL AND POSTAL MAILING LISTS AND A WEBSITE; AND ALLOWING CIVIL ACTION TO VOID A PROPOSED AGENCY ACTION FOR FAILURE TO PROVIDE REQUIRED NOTICE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notice to public and interested persons. (1) After an impact assessment has been completed, and regardless of the findings in the assessment, the state agency that performed the impact assessment shall provide notice to the public and interested persons of its intent to engage in the proposed action. The notice must be provided through use of either electronic e-mail lists or postal mail lists to all persons who have elected to be notified of impact assessments and through the use of the state's official internet website used by all state agencies.

(a) The electronic e-mail lists and postal mail lists must be established to allow interested persons to be on lists notifying them of impact assessments of all state agencies or of specific information based on agency name or geographical location of a proposed action and may provide notice based on other criteria that would promote public awareness of proposed actions.

(b) The agency website link must allow access to impact assessments of all state agencies or to specific information based on agency name or geographical location of a proposed action and may also be based on other criteria that would promote public awareness of proposed actions. The website must provide a summary of the impact assessment and a link to a source for the complete impact assessment.

(2) If due to time constraints a state agency is compelled to take an action allowed by this part before completion of an impact assessment, it shall, within 3 days of learning of the requirement to take the action, post notice of the action and provide a brief explanation of the action, the need for expedited action, and an estimate of when the action will be completed and the expected availability of the completed summary and impact statement.

(3) Unless the action may be taken without a completed impact statement as provided in this part, the state agency may not take the proposed action until it has completed and posted the impact statement.

(4) The state agency shall update the assessment and provide notice to the public if the action is not adopted before the 180th day after the date the original notice was given.

Section 2. Suit to invalidate state agency action. (1) A state agency's adopted action is not valid unless the action was taken in compliance with 2-10-105. A private property owner affected by a state agency action taken without fulfilling the requirements of 2-10-105 may bring suit for a declaration of invalidity of the action.

(2) A suit under this section must be filed in a court in the county in which the property owner's affected property is located. If the affected property is located in more than one county, the property owner may file suit in any county in which the affected property is located.

(3) The court shall award a property owner who prevails in a suit under this section reasonable and necessary attorney fees and court costs.

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 10, part 1, and the provisions of Title 2, chapter 10, part 1, apply to [sections 1 and 2].

Approved April 28, 2011

CHAPTER NO. 287

[SB 385]

AN ACT GENERALLY REVISING THE MONTANA PARENTS AS SCHOLARS PROGRAM; CLARIFYING THE FUNDING SOURCE FOR THE PROGRAM; CLARIFYING REPORTING REQUIREMENTS FOR THE PROGRAM; AMENDING SECTION 53-4-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-209, MCA, is amended to read:

"53-4-209. Montana parents as scholars program — department duties. (1) There is a Montana parents as scholars program administered by the department.

(2) The department shall:

(a) use state maintenance of effort funds or temporary assistance for needy families funds~~, to the extent practicable,~~ in a program to provide ~~public~~ assistance ~~only~~ to eligible ~~individuals~~ *households* for the purpose of continuation of education leading toward a high school diploma, a general

equivalency degree, *vocational training,* an associate's degree, or a baccalaureate degree;

~~(b) establish or coordinate a skills training center pilot program in coordination with the board of regents or a community college district to provide training to individuals identified as appropriate through an assessment process;~~

~~(c)~~*(b)* allow an individual receiving ~~public assistance from the program~~ *temporary assistance for needy families* to attend an approved educational program if the individual:

~~(i) has completed an employee assessment conducted as provided by rule;~~

~~(ii)~~*(i)* meets the income and resource eligibility requirements *for temporary assistance for needy families*; *and*

~~(iii)~~*(ii)* qualifies as a full-time student pursuant to subsection (4); and

~~(iv) completes a 180-hour work activity requirement in a 12-month period that may include work study, internships, or paid employment;~~

~~(d)~~*(c)* limit approved educational programs to educational courses that are intended to promote economic self-sufficiency, not to exceed the baccalaureate level. ~~or one vocational training program; and~~

~~(e) amend the state plan submitted to the United States department of health and human services to provide that the state elects, as authorized by 42 U.S.C. 602(a)(1)(A)(ii), to define work as including all activities permitted under 42 U.S.C. 607 and satisfactory full-time school attendance.~~

(3) The ~~department shall provide~~ *participants may apply for and may be eligible for child-care assistance provided by the department* ~~for dependent day care while the recipient is in a work activity~~ *to be paid from the temporary assistance for needy families block grant funds that are transferred to discretionary funding for child care*.

(4) A program must require a ~~recipient~~ *participant* to be a full-time student, which means *that* a ~~recipient~~ *participant*:

(a) shall maintain enrollment in at least 12 credit hours each semester or 30 credit hours a year; *or*

(b) must be a full-time high school student, GED student, or vocational training student as defined by the institution in which the participant is enrolled;

~~(b)~~*(c)* shall maintain a 2.0 grade point average on a 4.0 grade point scale *or be making satisfactory progress as defined by the institution in which the participant is enrolled*; *and*

~~(c) shall cooperate with paternity and child support requirements;~~

~~(d) shall agree to relocate after graduation, if necessary, to seek employment in a job for which the education was intended; and~~

~~(e)~~*(d)* may not be allowed to remain in the program after receiving a baccalaureate degree.

(5) (a) There may be no more than 25 participants in the program at any one time.

(b) Temporary assistance for needy families participants within the 12-month period allowed by federal law do not count in the total number of participants in the parents as scholars program. However, the parents as scholars program may be used to extend a participant's education beyond the 12-month federal period.

(6) The department shall provide annual reports to the legislative finance committee and the children, families, health, and human services interim committee."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2011

CHAPTER NO. 288

[SB 412]

AN ACT PROVIDING A TEMPORARY TAX EXEMPTION FOR PROPERTY OWNED BY A FEDERALLY RECOGNIZED MONTANA INDIAN TRIBE WHEN THE PROPERTY HAS A FEDERAL TRUST APPLICATION PENDING; PROVIDING THAT EXISTING TAX LIENS ARE NOT EXTINGUISHED; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Temporary exemption. (1) Subject to subsection (2), property owned in fee by a federally recognized Indian tribe located within the boundaries of the state of Montana is temporarily exempt from taxation on January 1 after the following conditions are met:

(a) the United States department of the interior, bureau of Indian affairs, has determined that the initial written request or trust application submitted by the tribe is complete; and

(b) the tribe has submitted a timely property tax exemption application to the department and the department has approved the tribe's exemption application.

(2) The temporary exemption applies only for the timeframe during which a decision on the trust application is officially pending before the United States department of interior, bureau of Indian affairs, but the exemption may not exceed a period of 5 years and ceases earlier if the United States denies the trust application.

(3) For tax years following the department's approval of the exemption, the tribe shall annually certify to the Department that the trust application is still under consideration by the United States department of interior, bureau of Indian affairs, and has not been denied. The exemption applies only for tax years for which the department has received a timely certification from the affected tribe.

(4) If a trust application has been denied, the temporary exemption expires on December 31 of the year in which the trust application was denied. The temporary exemption is no longer available for property associated with a trust application that has been denied.

(5) If the United States takes tribally owned property out of trust, the property is subject to tax as otherwise provided by federal and state law.

Section 2. Rulemaking authority. The department may adopt rules to implement the provisions of [section 1].

Section 3. Existing tax liens not extinguished. [This act] does not extinguish existing property taxes, including but not limited to taxes due and owing, delinquent taxes, tax liens, or tax deeds on property.

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [sections 1 and 2].

Section 6. Effective date. [This act] is effective January 1, 2012.

Approved April 28, 2011

CHAPTER NO. 289

[SB 420]

AN ACT PROVIDING PENALTIES FOR DELINQUENT FILING OF REQUIRED AUDITS AND REPORTS BY A LOCAL GOVERNMENT ENTITY TO THE DEPARTMENT OF ADMINISTRATION; REQUIRING THE DEPARTMENT TO ADOPT RULES ESTABLISHING A FINE; ALLOWING THE DEPARTMENT TO WAIVE THE PENALTIES UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-7-503 AND 2-7-517, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-503, MCA, is amended to read:

"2-7-503. Financial reports and audits of local government entities. (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed *and submitted to the department for review* within 6 months of the end of the reporting period. ~~The local government entity shall submit the financial report to the department for review.~~

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), but regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection

(3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department.

(7) Failure to comply with the provisions of this section subjects the local government entity to the penalties provided in 2-7-517."

Section 2. Section 2-7-517, MCA, is amended to read:

"2-7-517. ~~Penalty~~ *Penalties — rules to establish fine.* (1) When a local government entity has failed to file a report as required by 2-7-503(1)~~, unless an extension has been granted by the department for good cause shown,~~ or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) In addition to the penalty provided in subsection (1), if a local government entity has not filed the audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.

~~(2)~~*(3)* When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

(4) The department may grant an extension to a local government entity for filing the audits and reports required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local government entity shows good cause for the delinquency or demonstrates that the failure to comply with 2-7-503 was the result of circumstances beyond the entity's control.

(5) The department shall adopt rules establishing a fine, not to exceed $100, based on the cost of providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the timeframes required under that section."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to audits and reports required under [section 1] for fiscal year 2010 and thereafter.

Approved April 28, 2011

CHAPTER NO. 290

[HB 265]

AN ACT PROVIDING THAT AN INSURANCE COMPANY MAY NOT UNILATERALLY DISREGARD A REPAIR OPERATION OR COST IDENTIFIED BY AN ESTIMATING SYSTEM THAT THE INSURER AND AN AUTOMOBILE BODY REPAIR BUSINESS OR LOCATION HAVE AGREED TO UTILIZE IN DETERMINING THE COST OF REPAIR; AND AMENDING SECTION 33-18-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-224, MCA, is amended to read:

"33-18-224. Designation of specific automobile body repair businesses prohibited. (1) (a) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(i) require that a claimant under the policy use a particular automobile body repair business or location for an estimate or a repair; ~~or~~

(ii) engage in any act or practice that intimidates, coerces, or threatens a claimant or that provides an incentive or inducement for a claimant to use a particular automobile body repair business or location*; or*

(iii) unilaterally disregard a repair operation or cost identified by an estimating system that the insurer and an automobile body repair business or location have agreed to utilize in determining the cost of repair.

(b) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may have access to the motor vehicle for purposes of preparing a competitive estimate.

(2) (a) Except as provided in subsection (2)(b), if an insurance company has direct repair programs with automobile body repair businesses or locations, the insurance company may not limit the number of automobile body repair businesses or locations with whom it maintains direct repair programs.

(b) An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.

(c) Upon request, the insurance company shall provide, without prejudice or bias, the claimant with a list that includes all automobile body repair businesses

or locations that are reasonably close or convenient to the claimant and willing to provide services and that meet the insurance company's criteria regarding whether the automobile body repair business or location:

(i) possesses the equipment necessary to undertake repairs;

(ii) undertakes training of management and technical personnel with respect to repair information and the claims process;

(iii) agrees to perform quality repairs at the market price and that meet reasonable industry repair standards;

(iv) agrees to warrant the quality of work, including refinishing, in writing to the claimant, for a period of not less than 1 year from the date of repair;

(v) agrees to inspection of its repairs and services by the insurance company and agrees that the insurance company may terminate the direct repair program with the automobile body repair business or location if the repairs and services are below the standards of quality required by the insurance company; and

(vi) if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair business or location has the necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the claimant.

(d) If the claimant requests the list provided for in subsection (2)(c), the insurance company shall inform the claimant that the claimant may use an automobile body repair business or location at the sole discretion of the claimant.

(3) For the purposes of this section, an incentive or inducement does not include:

(a) providing a claimant with the list provided for in subsection (2)(c); or

(b) referring to a warranty issued by an automobile body repair business or location.

(4) The claimant may use an automobile body repair business or location at the claimant's sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the market price, as defined in 33-18-222.

(5) If the claimant uses an automobile body repair business or location that is not on a list provided for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location chosen by the claimant.

(6) It is unlawful for an automobile body repair business or location to charge or agree to charge a claimant more than an uninsured customer for any automobile body repair service.

(7) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

(8) For purposes of this section:

(a) "automobile body repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products;

(b) "claimant" means the person seeking repair of a motor vehicle whether that person is the insured person or a third party making a claim against the insurer."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2011

CHAPTER NO. 291

[HB 416]

AN ACT PROVIDING FOR QUALITY ASSURANCE ACTIVITIES BY MEDICAL PRACTICE GROUPS; PROVIDING FOR CONFIDENTIALITY OF THE PROCEEDINGS OF QUALITY ASSURANCE COMMITTEES; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a quality assurance committee that are used exclusively in connection with quality assessment or improvement activities, including but not limited to the professional training, supervision, or discipline of a medical practitioner by a medical practice group.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident report" or "occurrence report" means the written business record of a medical practice group created in response to an untoward event, including but not limited to a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event by a quality assurance committee that was conducted in response to an incident report or occurrence report.

(4) "Medical practice group" means a group of two or more medical practitioners practicing medicine in a professional corporation, professional limited liability company, partnership, sole proprietorship, or associations of these entities.

(5) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203.

(6) "Quality assurance committee" means a duly appointed committee within a medical practice group that administers a quality assurance program and may be called by another name within the medical practice group, including

but not limited to a utilization review, peer review, medical ethics review, professional standards review, quality assurance, or quality improvement committee.

(7) "Quality assurance program" means a comprehensive, ongoing system of mechanisms established by a medical practice group for monitoring and evaluating the quality and appropriateness of the care provided to patients in order to:

(a) identify and take steps to correct any significant problems and trends in the delivery of care; and

(b) take advantage of opportunities to improve care.

(8) (a) "Records" means records of interviews, internal reviews and investigations, and all reports, statements, minutes, memoranda, charts, statistics, and other documentation generated during the activities of a quality assurance program.

(b) The term does not mean original medical records or other records kept relative to any patient in the course of the business of operating as a medical practice group.

Section 2. Quality assurance program activities. A quality assurance program may include but is not limited to the following activities:

(1) review of pending malpractice claims;

(2) review of quality assurance issues;

(3) identification of areas in need of improvement related to quality and appropriateness of patient care;

(4) promotion and evaluation of best practices;

(5) review and analysis of risk management issues;

(6) oversight of medical event management processes;

(7) prioritization of risk management activities;

(8) tracking of information and of trends identified by data;

(9) investigation of incidents related to quality;

(10) development of risk management strategies, education, and training;

(11) development and implementation of remedial solutions related to quality and appropriateness of patient care for all licensed professionals and other staff affiliated with the medical practice group;

(12) review of information and trends related to claims; and

(13) peer review and oversight of medical practitioners.

Section 3. Quality assurance committee access to information. (1) It is in the interest of public health and patient medical care that quality assurance committees have access to medical records and other health care information relating to the condition and treatment of the patients of medical practice groups in order to:

(a) evaluate matters relating to the care and treatment of patients for research purposes;

(b) reduce morbidity or mortality; and

(c) obtain statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries.

(2) To carry out these purposes, a medical practice group and its agents and employees may provide medical records or other health care information

relating to the condition and treatment of any patient of the medical practice group to any quality assurance committee of the medical practice group.

Section 4. Medical practice group quality assurance — confidentiality — exception — liability of members. (1) Except as provided in subsection (6), the proceedings of a quality assurance committee of a medical practice group, the data it produces, and the material it considers:

(a) must be confidential;

(b) may not be considered to be a public record; and

(c) may not be subject to discovery or introduction into evidence in any civil action against a health care facility or an individual employed by or under contract with a health care facility or a medical practice group that results from matters that are the subject of evaluation and review by the quality assurance committee.

(2) A person who was in attendance at a meeting of the quality assurance committee may not be required to testify in any civil action about:

(a) the information and materials produced or presented during the proceedings of the quality assurance committee; or

(b) the findings, recommendations, evaluations, opinions, or other actions of the quality assurance committee or its members.

(3) Information otherwise available is not immune from discovery or use in a civil action merely because the information was presented during proceedings of the quality assurance committee. Nothing in this section may prevent a medical practitioner from using otherwise available information in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges, or employment of the medical practitioner.

(4) A member of the quality assurance committee or a person who provides information orally or in writing to a quality assurance committee may be subpoenaed and required to testify in a civil action regarding events about which the person has knowledge independent of the quality assurance program. The member or person may not be asked:

(a) for impeachment or other purposes, about the information the person provided to the quality assurance committee; or

(b) about any opinions formed as a result of the quality assurance committee proceeding.

(5) All data relating to quality assurance committee activities compiled under [sections 1 through 6] must be maintained in a confidential location separate from patient medical records.

(6) The governing body of a medical practice group may waive privileges under this section and release information or present data of the quality assurance program by discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. Without waiving privileges under this section, the governing body of a medical practice group may voluntarily release information or present data to a health care facility quality assurance committee established under 50-16-202. The information or records must be subject to the privileges and immunities provided for in 50-16-202.

(7) A duly appointed member of a quality assurance committee who acts without malice or fraud may not be subject to liability for damages in any civil action because of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the quality assurance committee.

Section 5. Quality assurance guidelines — reviews — contracts. (1) Reviews of medical practitioners conducted by a quality assurance committee under [sections 1 through 6] must comply with the following guidelines:

(a) A random review is a review of at least 10 randomly selected patient charts, which must be reviewed by a quality assurance committee. The quality assurance committee may gather data from any source for purposes of the review. The quality assurance committee shall submit an evaluation report to the medical practice group outlining the review findings and recommending changes if changes are determined necessary.

(b) A focused review is a review intended for specific clinical and quality improvement purposes, such as:

(i) reviewing patient medical records relating to a certain disease or procedural category for purposes of comparing documented treatment to available and current standards of medical care;

(ii) assessing the efficacy and efficiency of an office procedure or process related to clinical care; or

(iii) reviewing office and clinical practices prompted by an analysis and results of incident reports.

(c) An incident review is for purposes of gathering data, investigating, conducting analysis, coordinating all responses, and recommending and initiating corrective action, as necessary, connected with a specific incident involving the delivery of medical care to a patient of the medical practice group.

(2) (a) A review of a medical practitioner conducted by a quality assurance committee under [sections 1 through 6] must be based on appropriateness, medical necessity, adequacy of documentation, and efficiency of services.

(b) The medical practitioner being reviewed must be immediately advised of the findings of the quality assurance committee in order to further the educational process for the physician.

(c) As a result of a review of a medical practitioner conducted under [sections 1 through 6], the medical practice group is responsible for documenting:

(i) any corrective action that is taken;

(ii) any policies, procedures, or clinical processes that are changed;

(iii) the person responsible for implementing the changes; and

(iv) how the medical practice group will ensure that the changes are made.

(3) A medical practice group may contract with a group or organization composed of medical practitioners or with a nonprofit corporation engaged in performing the functions of a quality assurance committee for purposes of conducting any review allowed under [sections 1 through 6].

Section 6. Restrictions on use or publication of information. (1) A quality assurance committee may use or publish health care information only for the purpose of evaluating matters of medical care, therapy, and treatment and for research and statistical purposes.

(2) In any report or publication of findings and conclusions of a quality assurance committee, the committee or the members, agents, or employees of the committee may not disclose the name or identity of any patient whose medical records or other protected health information have been studied.

(3) A quality assurance committee and its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and may not disclose or reveal the name of any patient of a medical practice group.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [sections 1 through 6].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2011

CHAPTER NO. 292

[HB 172]

AN ACT REVISING LAWS RELATED TO THE HUNTING OF GRIZZLY BEARS; AMENDING SECTIONS 87-1-304, 87-2-701, 87-5-301, AND 87-5-302, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-304, MCA, is amended to read:

"87-1-304. Fixing of seasons and bag and possession limits. (1) ~~(a) The~~ *Subject to the provisions of 87-5-302, the* commission may:

~~(i)~~*(a)* fix seasons, bag limits, possession limits, and season limits;

~~(ii)~~*(b)* open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; ~~and~~

~~(iii)~~*(c)* declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, and wolf in those areas~~.~~*;*

~~(b)~~*(d)* ~~The commission may~~ restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences~~.~~*; and*

~~(c)~~*(e)* ~~The commission may~~ declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) ~~The~~ *Subject to the provisions of 87-5-302, the* commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake,

or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. Section 87-2-701, MCA, is amended to read:

"87-2-701. Special licenses. (1) An applicant who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $125; nonresident, $750;

(b) mountain goat—resident, $125; nonresident, $750;

(c) mountain sheep—resident, $125; nonresident, $750;

(d) antelope—resident, $14; nonresident, $200;

(e) grizzly bear—resident, ~~$50~~ *$150*; nonresident, ~~$300~~ *$1,000*;

(f) black bear—nonresident, $350;

(g) wild buffalo or bison—resident, $125; nonresident, $750.

(2) If a holder of a valid special grizzly bear license who is 12 years of age or older kills a grizzly bear, the person shall purchase a trophy license for a fee of ~~$25~~ *$50* within 10 days after the date of the kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) ~~Special~~ *Except as provided in 87-5-302 for special grizzly bear licenses, special* licenses must be issued in a manner prescribed by the department."

Section 3. Section 87-5-301, MCA, is amended to read:

"87-5-301. Policy toward grizzly ~~bear~~ *bears.* It is ~~hereby declared~~ the policy of the state of Montana to ~~protect, conserve, and~~ manage grizzly ~~bear~~ *bears* as a ~~rare~~ species ~~of Montana wildlife~~ *in need of management*."

Section 4. Section 87-5-302, MCA, is amended to read:

"87-5-302. Commission regulations on grizzly ~~bear~~ *bears.* *(1)* The commission ~~shall have authority to provide open and closed seasons; means of taking; shooting hours;~~ *may:*

(a) pursuant to subsection (2), regulate the hunting of grizzly bears, including the establishment of tagging requirements for carcasses, skulls, and hides; ~~possession limits;~~ and

(b) establish requirements for *the* transportation, exportation, and importation of grizzly ~~bear~~ *bears*.

(2) When special grizzly bear licenses are to be issued pursuant to 87-2-701, the commission shall establish hunting season quotas for grizzly bears that will prevent the population of grizzly bears from decreasing below sustainable levels and with the intent to meet population objectives for elk, deer, and antelope. The

provisions of this subsection do not affect the restriction provided in 87-2-702(3) that limits a person to the taking of only one grizzly bear in Montana."

Section 5. Effective date. [This act] is effective March 1, 2012.

Approved April 29, 2011

CHAPTER NO. 293

[SB 1]

AN ACT REQUIRING RECALCULATION OF THE AMOUNT ASSESSABLE TO EACH LOT, TRACT, OR PARCEL IN A SPECIAL IMPROVEMENT DISTRICT OR RURAL SPECIAL IMPROVEMENT DISTRICT IF THE NUMBER OF LOTS, TRACTS, OR PARCELS INCREASES; REQUIRING NOTICE OF POSSIBLE RECALCULATIONS DURING THE CREATION OF THE DISTRICT; AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2151, 7-12-4104, 7-12-4106, 7-12-4161, AND 7-12-4162, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2103, MCA, is amended to read:

"7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating a special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention.

(2) The resolution must:

(a) designate the number of the district;

(b) describe the boundaries of the district;

(c) state in the resolution the general character of the improvements that are to be made;

(d) designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost of the work; ~~and~~

(e) specify the method or methods by which the costs of the improvements will be assessed against property in the district*; and*

(f) if the method of assessment is that described in 7-12-2151(1)(d), specify that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-2151(4).

(3) The board of county commissioners may include, in one proceeding under one resolution of intention and in one contract, any of the different kinds of improvements or work provided for in this part and may include any number of streets and rights-of-way or portions of streets and rights-of-way, and it may exempt any of the work already done upon a street to the official grade."

Section 2. Section 7-12-2105, MCA, is amended to read:

"7-12-2105. Notice of resolution of intention to create district — hearing — exception. (1) Upon passage of a resolution of intention pursuant to 7-12-2103, the board of county commissioners shall publish notice of the passage as provided in 7-1-2121.

(2) A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation

owning real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes.

(3) (a) The notice must describe the general character of the improvements proposed to be made or acquired by purchase, state the estimated cost of the improvements, describe generally the method or methods by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of the improvements or the creation of the district. *If the method of assessment described in 7-12-2151(1)(d) is used, the notice must state that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-2151(4).*

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a resolution of intention to create a district that is passed upon receipt of a petition as provided in 7-12-2102(2)."

Section 3. Section 7-12-2151, MCA, is amended to read:

"7-12-2151. Assessment of costs. (1) To defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the board of county commissioners shall assess the entire cost of the improvements against benefited lots, tracts, or parcels of land in the district, based upon the benefits received, and shall adopt one or any combination of the following methods of assessment for each improvement made or acquired for the benefit of the district:

(a) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost which its assessable area bears to the assessable area of all the benefited lots, tracts, or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection (1)(a), "assessable area" means an area of a lot, tract, or parcel of land representing the benefit conferred upon the lot, tract, or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot, tract, or parcel.

(b) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the benefited lots or pieces of land within the district, if the board determines the assessment to be equitable in proportion to and not exceeding the benefits received from the improvement by the lot, tract, or parcel.

(c) Each lot, tract, or parcel of land in the district abutting upon the street where the improvement has been made may be assessed in proportion to its lineal feet abutting the street.

(d) Each lot, tract, or parcel of land in the district may be assessed an equal amount based upon the total cost of the improvement.

(e) Each lot, tract, or parcel of land in the district served by a utility connection may be assessed an equitable lump sum for the connection based on the bid price in the applicable contract.

(2) The board may use one or any combination of methods of assessment in a single special improvement district and, if more than one improvement is undertaken, need not assess each lot, tract, or parcel in the district for the cost of all the improvements. *If the method of assessment described in subsection (1)(d) is used, the resolution of intention under 7-12-2103 and notice under 7-12-2105 must provide that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in subsection (4).*

(3) The board in its discretion may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds ~~in its hands~~ *that are* available *to it* for that purpose or to include the whole or any part of the costs within the amount of the assessment to be paid by the benefited property in the district.

(4) (a) If the method specified for assessment is that provided in subsection (1)(d) and an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of a district created as provided in this part during the term of bonded indebtedness that is payable from the assessments, the board shall recalculate the amount assessable to each lot, tract, or parcel. The board shall comply with the provisions of sections 7-12-2158 through 7-12-2160 in adopting the recalculated amount.

(b) The board shall base the recalculation on the amount of the district's outstanding bonded indebtedness for the current fiscal year and shall spread the assessments across the district based on the number of benefited lots, tracts, or parcels within the boundaries of the district as of July 1 following the action that resulted in the increase in the number of benefited lots, tracts, or parcels."

Section 4. Section 7-12-4104, MCA, is amended to read:

"7-12-4104. Resolution of intention to create special improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall:

(a) designate the number of such district;

(b) describe the boundaries thereof;

(c) state therein the general character of the improvement or improvements which are to be made and an approximate estimate of the cost thereof; ~~and~~

(d) specify the method or methods by which the costs of the improvements will be assessed against property in the district*; and*

(e) if the method of assessment is that described in 7-12-4162(3)(a), specify that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the

assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-4162(3)(b).

(3) When any improvement is to be made in paving, the city or town council may, in describing the general character of it in the resolution, describe several kinds of paving."

Section 5. Section 7-12-4106, MCA, is amended to read:

"7-12-4106. Notice of passage of resolution of intention — exception. (1) Except as provided in subsection (4), upon having passed the resolution of intention pursuant to 7-12-4104, the council shall give notice of the passage of the resolution of intention.

(2) The notice must be published as provided in 7-1-2121. A copy of the notice must be mailed to each person, firm, or corporation or the agent of the person, firm, or corporation having real property within the proposed district listed in the owner's name upon the last-completed assessment roll for state, county, and school district taxes, at the owner's last-known address, upon the same day that the notice is first published or posted.

(3) (a) The notice must describe the general character of the proposed improvements, state the estimated cost of the improvements, describe generally the method by which the costs of the improvements will be assessed, and designate the time when and the place where the council will hear and pass upon all written protests that may be made against the making or acquisition of the improvements or the creation of the district. *If the method of assessment described in 7-12-4162(3)(a) is used, the notice must state that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-4162(3)(b).*

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-4222:

(i) the general fund of the city or town may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the city or town to meet the financial requirements of the revolving fund.

(c) The notice must refer to the resolution on file in the office of the city clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement.

(4) The provisions of this section do not apply to a district that is created under 7-12-4114 following receipt of a petition as provided in 7-12-4102(3)."

Section 6. Section 7-12-4161, MCA, is amended to read:

"7-12-4161. Choice in manner of assessing costs. (1) Except as provided in subsection (2), to defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the city council or commission shall adopt one of the methods of assessment, where applicable, provided in 7-12-4162 through 7-12-4165 for each improvement to be made or acquired for the benefit of the district.

(2) The city council may use one or any combination of methods of assessment in a single special improvement district, and if more than one improvement is undertaken, each lot or parcel of land in the district need not be assessed for the cost of all the improvements. *If the method of assessment*

described in 7-12-4162(3)(a) is used, the resolution of intention under 7-12-4104 and notice under 7-12-4106 must provide that if an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of the district during the term of the bonded indebtedness, the assessment per lot, tract, or parcel then in the district will be recalculated as provided in 7-12-4162(3)(b)."

Section 7. Section 7-12-4162, MCA, is amended to read:

"7-12-4162. Assessment of costs — area option — assessed valuation option — equal amount option. (1) (a) The city council or commission shall assess the entire cost of an improvement against benefited property in the district, each lot or parcel of land assessed within such district to be assessed for that part of the whole cost which its assessable area bears to the assessable area of all benefited lots or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection, "assessable area" means an area of a lot or parcel of land representing the benefit conferred on the lot or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot or parcel.

(b) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the benefited property in the district.

(c) In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within 25 feet of the line of the street on which the improvement is to be made and all other benefited land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of land within the district lying within 25 feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other benefited land within the district shall bear.

(2) The city council or city commission may assess the cost of an improvement against each lot or parcel of land in the district based on the assessed value of the benefited lots or parcels of land within the district if the council or commission determines such assessment to be equitable and in proportion to and not exceeding the benefits derived from the improvement by the lot or parcel.

(3) *(a)* The city council or city commission may assess each lot or parcel of land in the district an equal amount based upon the total cost of the improvement.

(b) If the method specified for assessment is that described in subsection (3)(a) and an increase occurs in the number of benefited lots, tracts, or parcels within the boundaries of a district created as provided in this part during the term of bonded indebtedness that is payable from the assessments, the city council or city commission shall recalculate the amount assessable to each lot, tract, or parcel. The city council or city commission shall comply with the provisions of sections 7-12-4176 through 7-12-4178 in adopting the recalculated amount. The city council or city commission shall base the recalculation on the amount of the district's outstanding bonded indebtedness for the current fiscal year and shall spread the assessments across the district based on the number of benefited lots, tracts, or parcels within the boundaries of the district as of July 1

following the action that resulted in the increase in the number of benefited lots, tracts, or parcels."

Section 8. Effective date. [This act] is effective January 1, 2012.

Section 9. Applicability. [This act] applies to bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42, for which the resolution to create the district is adopted after December 31, 2011.

Approved April 29, 2011

CHAPTER NO. 294

[SB 16]

AN ACT REQUIRING A PERSON CONDUCTING SIMULCAST RACING THROUGH A SIMULCAST PARIMUTUEL NETWORK TO ENTER INTO A CONTRACT WITH THE BOARD OF HORSERACING; PROVIDING THAT A PERSON CONDUCTING SIMULCAST RACING WITHOUT A CONTRACT IS GUILTY OF A MISDEMEANOR; AUTHORIZING THE BOARD OF HORSERACING TO ACT AS A SIMULCAST PARIMUTUEL NETWORK PROVIDER WITH RESPECT TO SIMULCAST RACES; APPROPRIATING CERTAIN FUNDS TO THE BOARD OF HORSERACING; AMENDING SECTIONS 23-4-101, 23-4-105, 23-4-201, AND 23-4-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-101, MCA, is amended to read:

"23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advance deposit wagering" means a form of parimutuel wagering in which a person deposits money in an account with an advance deposit wagering hub operator licensed by the board to conduct advance deposit wagering. The money is used to pay for parimutuel wagers made in person, by telephone, or through a communication by other electronic means on horse or greyhound races held in or outside this state.

(2) "Advance deposit wagering hub operator" means a simulcast and interactive wagering hub business licensed by the board that, through a subscriber-based service located in this or another state, conducts parimutuel wagering on the races that it simulcasts and on other races that it carries in its wagering menu and that uses a computer that registers bets and divides the total amount bet among those who won.

(3) "Board" means the board of horseracing provided for in 2-15-3106.

(4) "Board of stewards" means a board composed of three stewards who supervise race meets.

(5) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(6) "Fantasy sports league" has the meaning provided in 23-5-801.

(7) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(8) "Match bronc ride" means a saddle bronc riding contest consisting of two sections known as a "long go" and a "short go" in which the win, place, and show winners are determined by judges of the rides for each go.

(9) "Minor" means a person under 18 years of age.

(10) "Parimutuel facility" means a facility licensed by the board at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted.

(11) "Parimutuel network" means an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues.

(12) "Persons" means individuals, firms, corporations, fair boards, and associations.

(13) (a) "Race meet" means racing of registered horses or mules, match bronc rides, and wild horse rides at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(14) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

(15) "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(16) "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(17) "Simulcast parimutuel network" means an association ~~licensed by~~ *that has contracted with* the board to receive or originate intrastate and interstate simulcast race signals, relay the race signals to licensed simulcast facilities, and manage statewide parimutuel wagering pools on simulcast races~~. A simulcast parimutuel network may be~~ *or has been* licensed by the board to operate a statewide parimutuel wagering pool for fantasy sports leagues. *The board may act as a simulcast parimutuel network provider with respect to simulcast races.*

(18) "Source market fee" means the portion of a wager made with a licensed advance deposit wagering hub operator by a Montana resident that is paid to the board.

(19) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(20) "Wild horse ride" means a wild horse riding contest in which three-person teams attempt to saddle a wild horse and ride it completely around a track with the first to do so declared the winner."

Section 2. Section 23-4-105, MCA, is amended to read:

"23-4-105. Authority of board. *(1)* The board shall license and regulate racing, match bronc rides, and wild horse rides and review race meets held in this state under this chapter. All percentages withheld from amounts wagered, amounts set aside pursuant to 23-4-202(4)(d), percentages collected pursuant to 23-4-204(3), percentages collected pursuant to 23-4-302(3) and (5)(b)(iii), and money collected pursuant to 23-4-304(1)(a) and (1)(b) must be deposited in a state special revenue account and are statutorily appropriated to the board as

provided in 17-7-502. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), 23-4-302(3) and (5)(b)(iii), and 23-4-304(1)(a) and (1)(b) to live race purses or for other purposes for the good of the existing horseracing industry. If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently authorized in Montana the board shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board shall consider both the economic and safety impacts on the existing racing and breeding industry.

(2) Funds retained by the board in a state special revenue fund pursuant to 23-4-302(1) and (4) are statutorily appropriated to the board as provided in 17-7-502 for the operation of a simulcast parimutuel network and for other purposes that the board considers appropriate for the good of the existing horseracing industry."

Section 3. Section 23-4-201, MCA, is amended to read:

"23-4-201. Licenses — *contracts.* (1) *(a)* A person may not hold a race meet~~, including simulcast race meets under the parimutuel system,~~ or conduct fantasy sports league wagering through a parimutuel facility, parimutuel network, or a simulcast parimutuel network conducting a fantasy sports league in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file with the department an application that must set forth the time, place, and number of days the license will continue and other information the board requires.

(b) A person may not conduct simulcast racing through a simulcast parimutuel network without having entered into a contract with the board.

(2) A person who participates in a race meet, except for a match bronc ride or a wild horse ride, must be licensed and charged an annual fee set by the board. The annual fee must be paid to the department and used for expenses of administering this chapter. Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A license may not be issued to a person who has failed to pay the fees, taxes, or money required under this chapter.

(4) An application to hold a race meet must be submitted to the department, and the board shall act on the application within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting a race meet comply with the requirements of the rules adopted by the board before granting a license.

(6) A racing association consisting of a local fair board or an association approved by a local fair board may ~~apply for a license~~ *submit a contract proposal to the board* to hold a simulcast race meet in a simulcast facility.

(7) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.

(8) A license to operate a parimutuel facility conducting fantasy sports league wagering may not be issued to an applicant unless the applicant is also licensed under Title 23, chapter 5."

Section 4. Section 23-4-202, MCA, is amended to read:

"23-4-202. Penalty for violations of law — authority of board — judicial review. (1) (a) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, except a participant in a match bronc ride or a wild horse ride, without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(b) A person operating a parimutuel facility, parimutuel network, or simulcast parimutuel network that conducts fantasy sports league wagering without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(c) A person conducting simulcast racing through a simulcast parimutuel network without having entered into a contract with the board is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which the stewards officiate may exclude from racecourses a person whom the board or board of stewards considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may prohibit application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in a state special revenue account. The board shall then distribute all funds collected under this subsection (4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities;

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races;

(j) conduct and supervision of parimutuel facilities, parimutuel networks, simulcast parimutuel networks, and parimutuel wagering on fantasy sports leagues conducted at parimutuel facilities;

(k) conduct and supervision of match bronc rides and wild horse rides; and

(l) conduct and supervision of advance deposit wagering.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 29, 2011

CHAPTER NO. 295

[SB 75]

AN ACT ALLOWING THE DEPARTMENT OF REVENUE TO ESTABLISH ALTERNATIVE OFFICE HOURS; AMENDING SECTION 2-16-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-117, MCA, is amended to read:

"2-16-117. Office hours. (1) Unless otherwise provided by law, state executive branch offices must be open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except on Saturdays, Sundays, and holidays. Each office must also be open at other times as the accommodation of the public or the proper transaction of business requires.

(2) The state treasurer may, in the interest of safekeeping funds, securities, and records, close the state treasurer's office from noon to 1 p.m. each day.

(3) The Montana historical society, established in 22-3-101, may be open for public visitation at hours other than those prescribed in this section, including hours during evenings and weekends.

(4) The department of revenue may establish alternative office hours for its offices located in the various counties if:

(a) the office is staffed by four or fewer full-time employees;

(b) the department holds a public hearing on the alternative office hours in the county seat after providing public notice in a newspaper of general circulation published in the county at least 2 weeks prior to the hearing;

(c) the county commissioners of a county in which the department employees are located in a county building approve the proposed alternative office hours if the alternative hours are outside of the county's normal business hours;

(d) the alternative office hours are adopted by administrative rule; and

(e) the office hours adopted pursuant to subsection (4)(d) are published at least two times a year in a newspaper of general circulation published in the county where the office is located."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 29, 2011

CHAPTER NO. 296

[SB 81]

AN ACT REVISING COMMERCIAL DRIVER LICENSING LAWS TO CONFORM TO CHANGES IN FEDERAL MOTOR VEHICLE SAFETY ADMINISTRATION REGULATIONS; CREATING RECORDKEEPING REQUIREMENTS FOR MEDICAL CERTIFICATE EXPIRATION DATES AND INFORMATION FOR CERTAIN COMMERCIAL DRIVERS;

AUTHORIZING LICENSE DOWNGRADE IN CERTAIN CIRCUMSTANCES; REVISING CERTAIN LICENSE SUSPENSION PROVISIONS; AMENDING SECTIONS 61-1-101, 61-5-112, 61-5-221, 61-8-102, 61-8-801, 61-8-803, 61-8-812, 61-11-102, AND 61-11-105, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Self-certification of operation status — medical certificate submission and tracking — notice of expiration — downgrade of license. (1) The department may not issue or renew a commercial driver's license unless the person applying for the license:

(a) certifies to the department the status of operation or expected operation of the commercial motor vehicle as being either nonexcepted interstate commerce or excepted interstate commerce, as those terms are described in 49 CFR 383.71, or intrastate commerce; and

(b) when nonexcepted interstate commerce is certified, submits to the department a current medical examiner's certificate as prescribed in 49 CFR, part 391, or when intrastate commerce is certified, submits to the department a current medical examiner's certificate as prescribed in 49 CFR, part 391, or a medical statement as prescribed by department rule.

(2) The department may not issue a commercial driver's license to a person seeking to transfer a valid commercial driver's license issued by another state driver licensing authority unless the requirements of subsection (1)(a) are met, and if the driver certifies to nonexcepted interstate commerce operation, the department shall check the person's CDLIS driver record to verify that the person's medical certification status is "certified".

(3) The department shall mail to the holder of a commercial driver's license certified for nonexcepted interstate commerce a notice of pending medical certificate expiration no earlier than 60 days and no later than 30 days prior to the expiration date of the current medical certificate. The department shall mail the notice to the Montana mailing address shown on the commercial driver's license or, if more recent, the mailing address updated pursuant to 61-3-119 and 61-5-115.

(4) On or before the expiration date of the current medical certificate, the holder of a commercial driver's license certified for nonexcepted interstate commerce shall submit a new medical certificate to the department.

(5) If a new medical certificate is not submitted as required in subsection (4), the department shall, within 10 days of expiration of the current medical certificate:

(a) update the CDLIS driver record to a status of "not certified";

(b) downgrade the person's commercial driver's license; and

(c) notify the person of the status change and the license downgrade on the CDLIS driver record.

(6) The department may reinstate a commercial driver's license that was downgraded under subsection (5) if, within the original term of the downgraded license, the person:

(a) submits a current medical certificate to the department;

(b) certifies to a change in operation status to excepted interstate; or

(c) certifies to a change in operation status to intrastate and submits either a current medical examiner's certificate as prescribed in 49 CFR, part 391, or a medical statement as prescribed by department rule.

(7) Within 10 days of issuance, transfer, renewal, downgrade, or upgrade of a commercial driver's license, the department shall update the CDLIS driver record for the license holder in accordance with the requirements of 49 CFR, part 383.

(8) A downgrade or subsequent upgrade of a CDLIS driver record pursuant to this section is an electronic transaction. The department may not require the surrender or replacement of a commercial driver's license under this section unless the license is expired.

(9) Unless the commercial driver's license is expired, the department may not require a license holder to take the knowledge and road or skills tests required under 61-5-110 or 61-5-111 to reinstate the commercial driver's license pursuant to subsection (6).

Section 2. Section 61-1-101, MCA, is amended to read:

"61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(5) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(6) "CDLIS driver record" means the electronic record of a person's commercial driver's license status and history stored as part of the commercial driver's license system established under 49 U.S.C. 31309.

~~(6)~~*(7)* "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor

vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

~~(7)~~*(8)* "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

~~(8)~~*(9)* (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials ~~as defined in 61-8-801~~.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection ~~(8)~~ *(9)*:

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

~~(9)~~*(10)* "Commission" means the state transportation commission.

~~(10)~~*(11)* "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

~~(11)~~*(12)* "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(12)~~*(13)* "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections ~~(12)(a)~~ *(13)(a)* through ~~(12)(c)~~ *(13)(c)*, a number assigned to the customer by the department when a transaction is initiated under this title.

~~(13)~~*(14)* (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection ~~(13)(b)(i)~~ *(14)(b)(i)* when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

~~(14)~~*(15)* "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

~~(15)~~*(16)* "Department" means the department of justice acting directly or through its duly authorized officers or agents.

~~(16)~~*(17)* "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

~~(17)~~*(18)* "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(19) "Downgrade" means the removal of a person's privilege to operate a commercial motor vehicle, as maintained by the department on the individual Montana driving record and the CDLIS driver record for that person.

~~(18)~~*(20)* "Driver" means a person who drives or is in actual physical control of a vehicle.

~~(19)~~*(21)* "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or instruction permit;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

~~(20)~~*(22)* "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

~~(21)~~*(23)* "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

~~(22)~~*(24)* "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(25) "Hazardous material" means:

(a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under 49 CFR, part 172; or

(b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

~~(23)~~*(26)* "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(24)~~*(27)* "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(25)~~*(28)* "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

~~(26)~~*(29)* "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

~~(27)~~*(30)* "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

~~(28)~~*(31)* "Manufactured home" has the meaning provided in 15-24-201.

~~(29)~~*(32)* "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

~~(30)~~*(33)* "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

~~(31)~~*(34)* (a) "Medium-speed electric vehicle" is a motor vehicle, upon or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

~~(32)~~*(35)* "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

~~(33)~~*(36)* "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215;

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

~~(34)~~*(37)* (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(35)~~*(38)* (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

~~(36)~~*(39)* (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

~~(37)~~*(40)* (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

~~(38)~~*(41)* "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(39)~~*(42)* (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(40)~~*(43)* (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; and

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(41)~~*(44)* "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

~~(42)~~*(45)* "Nonresident" means a person who is not a Montana resident.

~~(43)~~*(46)* (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

~~(44)~~*(47)* (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property upon the highways unless the vehicle is used for off-road recreation on public lands.

~~(45)~~*(48)* "Operator" means a person who is in actual physical control of a motor vehicle.

~~(46)~~*(49)* "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

~~(47)~~*(50)* "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

~~(48)~~*(51)* "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(49)~~*(52)* "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole

or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

~~(50)~~*(53)* "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

~~(51)~~*(54)* (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

~~(52)~~*(55)* "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

~~(53)~~*(56)* (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

~~(54)~~*(57)* "Recreational vehicle" includes a motor home, travel trailer, or camper.

~~(55)~~*(58)* "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

~~(56)~~*(59)* "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

~~(57)~~*(60)* "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

~~(58)~~*(61)* "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

~~(59)~~*(62)* "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

~~(60)~~*(63)* "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

~~(61)~~*(64)* (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

~~(62)~~*(65)* "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

~~(63)~~*(66)* "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

~~(64)~~*(67)* "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

~~(65)~~*(68)* "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

~~(66)~~*(69)* "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

~~(67)~~*(70)* (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(68)~~*(71)* (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(69)~~*(72)* (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(70)~~*(73)* "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

~~(71)~~*(74)* "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(72)~~*(75)* "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(73)~~*(76)* "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

~~(74)~~*(77)* "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(75)~~*(78)* "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(76)~~*(79)* (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(77)~~*(80)* "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

~~(78)~~*(81)* "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(79)~~*(82)* "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(80)~~*(83)* "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(81)~~*(84)* "Under the influence" has the meaning provided in 61-8-401.

~~(82)~~*(85)* "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(83)~~*(86)* "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

~~(84)~~*(87)* (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(85)~~*(88)* "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

~~(86)~~*(89)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(87)~~*(90)* "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 3. Section 61-5-112, MCA, is amended to read:

"61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — reciprocity agreements. (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the licensing standards and requirements of 49 CFR, part 383, the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older;

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and road or skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license; and

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license because the vehicles are not considered commercial motor vehicles as provided in 61-1-101~~(8)(b)(ii)~~*(9)(b)(ii)*."

Section 4. Section 61-5-221, MCA, is amended to read:

"61-5-221. Authority to revoke or remove hazardous materials endorsement. (1) If the transportation security administration of the department of homeland security informs the department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous ~~materials, as defined in 61-8-801,~~ *material* in commerce, but does not otherwise affect the person's commercial driver's license or any unrelated endorsements.

(2) A person whose hazardous materials endorsement has been revoked or removed under this section shall surrender the person's commercial driver's license to the department and apply for a replacement license, as provided in 61-5-114, that does not include the hazardous materials endorsement.

(3) Upon surrender of a hazardous materials endorsement by a person who is disqualified from holding a hazardous materials endorsement under 49 CFR, part 1572, the department shall note the removal of the hazardous materials endorsement on its records and on the commercial driver's license information system."

Section 5. Section 61-8-102, MCA, is amended to read:

"61-8-102. Uniformity of interpretation — definitions. (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title 7, chapter 33, an ambulance, and an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means:

(i) a vehicle propelled solely by human power upon which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches, 50 centimeters, regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour, 48.28 kilometers an hour, on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(c) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(d) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(e) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(f) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(g) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(h) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to 61-8-441; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(i) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(j) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(k) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101~~(8)(b)~~ *(9)(b)*.

(l) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(m) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(n) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(o) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(p) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(q) "Right-of-way" means the privilege of the immediate use of the roadway.

(r) "School bus" has the meaning provided in 20-10-101.

(s) "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(t) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(u) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 6. Section 61-8-801, MCA, is amended to read:

"61-8-801. Purpose ~~—~~ definition. (1) The purpose of this part is to reduce the number of commercial motor vehicle accidents in Montana, to provide greater safety to the motoring public and others by establishing stringent criteria governing the operation of commercial motor vehicles, and to deny the

privilege of operating commercial motor vehicles upon the public streets and highways to those commercial motor vehicle operators who are not qualified.

(2) To fulfill this purpose, the legislature intends that this part:

(a) establish criteria and procedures for the operation of commercial motor vehicles that require safety practices commensurate with the danger inherent to their operation;

(b) provide for increased administrative punishment for commercial motor vehicle operators who use alcohol while operating commercial motor vehicles;

(c) provide greater control of commercial motor vehicle operators using the streets and highways; and

(d) conform Montana's laws on commercial driver licensing with federal regulations based on the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, as amended.

~~(3) As used in this part, "hazardous material" means a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported.~~"

Section 7. Section 61-8-803, MCA, is amended to read:

"61-8-803. Suspension of commercial driver's license — serious traffic violations. (1) If the department receives notice from a court or another licensing jurisdiction that a person holding or required to hold a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents within a 3-year period, the department shall suspend the person's commercial driver's license:

(a) for 60 days upon receipt of notice of the second conviction; or

(b) for 120 days upon receipt of notice of the third or subsequent conviction.

(2) For purposes of this section, "serious traffic violation" means conviction, when operating a commercial motor vehicle, of:

(a) speeding ~~in excess of~~ 15 *or more* miles an hour above a posted speed limit;

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely;

(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident;

(f) operating a commercial motor vehicle without a commercial driver's license;

(g) operating a commercial motor vehicle without a commercial driver's license in one's possession or refusing to display a commercial driver's license upon request; ~~or~~

(h) operating a commercial motor vehicle without the proper class of commercial driver's license or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported*; or*

(i) using a mobile device to send text messages while operating a commercial motor vehicle in violation of a state or local law or ordinance on motor vehicle traffic control.

(3) A person is considered to have committed a second or subsequent serious traffic violation if less than 3 years have passed between the date of an offense

that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction."

Section 8. Section 61-8-812, MCA, is amended to read:

"61-8-812. Operation of out-of-service vehicle — criminal and civil penalties — suspension of commercial driver's license. (1) A person may not operate a commercial motor vehicle during any period in which the person, the commercial motor vehicle the person is operating, or the motor carrier operation is subject to an out-of-service order issued under state or federal authority.

(2) A violation of this section is a misdemeanor and a person convicted of a violation of this section shall be fined not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense.

(3) (a) In addition to the misdemeanor penalties provided in subsection (2) and suspension of the person's commercial driver's license as provided in subsection (4), a person who violates an out-of-service order issued under state or federal authority is subject to a civil penalty of not less than $1,100 or more than $2,750.

(b) The department or the county attorney of the county in which the violation occurred may petition the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is the county in which the violation occurred or in the first judicial district.

(c) A civil penalty collected under this section must be deposited in the state general fund.

(4) Upon receipt of notice from a court of competent jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been convicted of violating an out-of-service order, the department shall suspend the person's commercial driver's license for:

(a) 6 months for a first conviction;

(b) ~~1 year~~ *2 years* for a second conviction if the vehicle being operated by the person at the time of the violation was not transporting placardable hazardous materials or was not designed or being used to transport more than 15 passengers, inclusive of the driver; and

(c) 3 years:

(i) for a second conviction if the vehicle:

(A) being operated at the time of the violation was transporting placardable hazardous materials; or

(B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

(ii) for a third or subsequent conviction.

(5) For purposes of this section, an offender is considered to have been previously convicted if less than 10 years have elapsed between the commission of the present offense and a previous conviction.

(6) A temporary or probationary commercial driver's license may not be issued while a commercial driver's license is suspended under subsection (4)."

Section 9. Section 61-11-102, MCA, is amended to read:

"61-11-102. Records to be kept by department. (1) Except as provided in subsection ~~(6)~~ *(8)*, the department shall create and maintain a central database of electronic files that includes an individual Montana driving record for each person:

(a) who has been issued a Montana driver's license;

(b) who does not have a driver's license from, or active driving record in, another jurisdiction and for whom the department receives a report of conviction of a traffic violation or an offense requiring suspension or revocation of the person's driver's license; and

(c) whose driver's license or driving privileges have been suspended, revoked, canceled, or otherwise withdrawn by the department.

(2) ~~(a)~~ An individual Montana driving record maintained under this section must include:

~~(i)~~*(a)* personal information obtained from the application for a driver's license or a report of conviction;

~~(ii)~~*(b)* the person's driver's license number, license type, status, endorsements, restrictions, issue and expiration dates, and any suspensions, revocations, disqualifications, or cancellations that have been imposed against the person;

~~(iii)~~*(c)* all convictions reported to the department for the person; and

~~(iv)~~*(d)* traffic accidents in which the person was involved, except that a record of involvement in a traffic accident may not be entered on a licensee's record unless the licensee was convicted, as defined in 61-11-203, for an act causally related to the accident.

(3) (a) The department shall create and maintain a CDLIS driver record for each person who has been issued a Montana commercial driver's license or for whom a record of conviction, disqualification, or other licensure action has been taken for violations of any state or local law relating to motor vehicle traffic regulation, other than a parking violation, committed while operating a commercial motor vehicle.

(b) A CDLIS driver record maintained by the department must meet the requirements of 49 CFR 384.225.

~~(b)~~*(c)* If the department receives notice that a person has been disqualified by the federal motor carrier safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the disqualification on the ~~person's individual Montana driving~~ *CDLIS driver* record.

~~(c)~~*(4)* The department shall retain records created under this section for a period of time that meets or exceeds the standards established under 49 CFR, part 384.

~~(3)~~*(5)* The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward, by electronic or other means, a report of the conviction to the motor vehicle administrator in the state in which the person is a resident or licensed.

~~(4)~~*(6)* The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records are not required to be placed on a computer storage device.

~~(5)~~*(7)* (a) Except as provided in subsection ~~(5)(b)~~ *(7)(b)*, a reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the reproduction of the information is signed by a named custodian of the record and the following certification appears on each page:

The individual named below, being a designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(5), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed:.....

(Print Full Name)

(b) An order, record, or paper generated from the department's central database of electronic files of individual Montana driving records may be certified electronically by the generating computer. The certification must be a certification of the order, record, or paper as it appeared on a specific date.

(c) A court, an office of a clerk of court, or an attorney licensed to practice law in this state may receive and use a computer-generated individual Montana driving record as evidence without further foundation when:

(i) the individual Montana driving record is electronically transmitted from the department's central database of electronic individual Montana driving records to a department-authorized terminal device maintained by the court, the office of the clerk of court, or the attorney; and

(ii) the judge, an officer of the court, or the attorney certifies that the record was not altered in any way.

~~(6)~~*(8)* The department may remove any individual Montana driving record from the active database of electronic files maintained under this section if there has been no change in license status on or additional reports of conviction to the record in the immediately preceding 16 years. Any individual driving record removed must be retained elsewhere by the department as an inactive record in an electronic storage device that is searchable and retrievable."

Section 10. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information — fees. (1) Subject to the limitations of this section, the department shall, upon request, furnish a person the individual Montana driving record of a driver or licensee, containing the following data:

(a) the driver's or licensee's name, driver's license number, and date of birth;

(b) driver's license status, including the license type and any endorsements, the license issue date, license restrictions, any suspensions, revocations, or cancellations that have been imposed against the driver or licensee, and the license expiration date;

(c) convictions of the driver or licensee; and

(d) traffic accidents in which the driver or licensee was involved.

(2) The department may not enter into any agreement to disclose or sell, in bulk, any data contained in an individual Montana driving record unless the requester of the information provides the department with the names, driver's license numbers, and dates of birth of the drivers or licensees from whose records a change in license status or conviction activity is to be reported.

(3) *(a)* The department may not disclose personal information or highly restricted personal information from an individual Montana driving record, except as permitted or required under 61-11-507, 61-11-508, or 61-11-509.

(b) The department may not disclose medical certification status, driver self-certification status, or medical certificate information from a CDLIS driver record as part of an individual Montana driving record except as expressly authorized under 49 CFR 384.225.

(4) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

(5) (a) Subject to the requirements of subsection (6) and except as provided in subsection (5)(b), a fee of $4 must be paid for each individual Montana driving record requested. A fee of $10 must be paid if a certified Montana record, as provided in 61-11-102~~(5)~~*(7)*, is requested. A fee of 6 cents must be paid for each individual Montana driving record that is searched by the department to report to a requester a change in license status or conviction activity from one or more individual Montana driving records.

(b) An individual Montana driving record must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.

(6) In addition to the fees required in 61-11-510(3) and subsection (5) of this section, an individual Montana driving record or any report compiled from one or more individual Montana driving records that are electronically transmitted to a requester through a point of entry for electronic government services are subject to the convenience fee established under 2-17-1103.

(7) The department may require a requester, other than a federal, state, or local government agency, seeking one or more individual Montana driving records or any data otherwise contained in one or more individual Montana driving records in electronic format to use a point of entry for electronic government services to obtain the record or data."

Section 11. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 1].

Section 12. Direction to code commissioner. Sections 61-5-220 and 61-5-221 are intended to be renumbered and codified as an integral part of Title 61, chapter 5, part 1.

Section 13. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective January 30, 2012.

(2) [Sections 7 and 8] are effective January 1, 2012.

(3) [Sections 11 and 12] and this section are effective October 1, 2011.

Approved April 29, 2011

CHAPTER NO. 297

[SB 87]

AN ACT AUTHORIZING FORGIVENESS OF LOAN PRINCIPAL AND EXPENDITURE OF FUNDS TO MEET OTHER FEDERAL INCENTIVES, CONDITIONS, AND REQUIREMENTS IN THE WATER POLLUTION CONTROL AND DRINKING WATER STATE REVOLVING FUNDS; AMENDING SECTIONS 75-5-1107 AND 75-6-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-1107, MCA, is amended to read:

"75-5-1107. (Temporary) Uses of revolving fund. (1) Money in the revolving fund ~~must~~ *may* be used to:

(a) make loans to municipalities to finance all or a portion of the cost of a project and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects;

(b) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(c) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(d) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(e) provide loan guarantees for similar revolving funds established by municipalities;

(f) earn interest on fund accounts; ~~and~~

(g) pay reasonable administrative costs of the program not to exceed 4% of all federal grant awards to the fund or the maximum amount allowed under the federal act*; and*

(h) provide additional subsidization to eligible recipients in the form of forgiveness of principal of loans to the extent authorized or required by federal law and subject to satisfaction of conditions on loans described in 75-5-1113 or to satisfy any other incentives, conditions, or requirements of federal law related to the program.

(2) Money received by the state under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, as capitalization grants for a state revolving fund may be used by the department or the department of natural resources and conservation to provide additional subsidization to eligible recipients in the form of forgiveness of the principal of a loan to the extent permitted or required by federal law and subject to satisfaction of conditions on loans described in 75-5-1113. (Terminates June 30, 2011—sec. 82, Ch. 489, L. 2009.)

75-5-1107. (Effective July 1, 2011) Uses of revolving fund. Money in the revolving fund ~~must~~ *may* be used to:

(1) make loans to municipalities to finance all or a portion of the cost of a project and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects;

(2) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(5) provide loan guarantees for similar revolving funds established by municipalities;

(6) earn interest on fund accounts; ~~and~~

(7) pay reasonable administrative costs of the program not to exceed 4% of all federal grant awards to the fund or the maximum amount allowed under the federal act*; and*

(8) provide additional subsidization to eligible recipients in the form of forgiveness of principal of loans to the extent authorized or required by federal law and subject to satisfaction of conditions on loans described in 75-5-1113 or to satisfy any other incentives, conditions, or requirements of federal law related to the program."

Section 2. Section 75-6-212, MCA, is amended to read:

"75-6-212. Use of revolving fund. (1) Money in the revolving fund may be used to:

(a) make loans to community water systems and nonprofit noncommunity water systems as provided in this part;

(b) buy or refinance the debt obligation of a municipality at an interest rate that does not exceed market rates, provided that the obligations were incurred and construction of the project began after July 1, 1993;

(c) guarantee or purchase insurance in order to enhance credit or reduce interest rates for obligations of municipalities that are issued to finance eligible projects;

(d) leverage the total amount of revolving funds available by providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, the net proceeds of which are deposited in the revolving fund;

(e) pay reasonable administrative costs of the program, not to exceed 4% of the annual capitalization grant or the maximum amount allowed under the federal act;

(f) if matched by an equal amount of state funds, pay the department's costs in an amount not to exceed 10% of the annual capitalization grant for the following:

(i) public water system supervision programs;

(ii) administering or providing technical assistance through source water protection programs;

(iii) developing and implementing a capacity development strategy under section 300g-9 of the federal act (42 U.S.C. 300g-9); and

(iv) administering an operator certification program in order to meet the requirements of section 300g-8 of the federal act (42 U.S.C. 300g-8);

(g) pay the costs in an amount not to exceed 2% of the annual capitalization grant for the purpose of providing technical assistance to public water systems serving 10,000 or fewer persons. No less than 1.5% of the annual capitalization grant must be contracted by the department to private organizations or individuals for the purposes of this subsection.

(h) reimburse the expenses, as provided for in 2-18-501 through 2-18-503 and 5-2-302, of the advisory committee established pursuant to 75-6-231 while on official committee business.*; and*

(i) provide additional subsidization, separate and apart from loan subsidies for disadvantaged communities provided in 75-6-226, to eligible recipients in the form of forgiveness of principal of loans to the extent authorized or required by federal law and subject to satisfaction of conditions on loans provided for in 75-6-224 or to satisfy any other incentives, conditions, or requirements of federal law related to the program.

(2) Except as provided in subsection (3), money in the fund may not be used for:

(a) expenditures related to monitoring, operation, and maintenance;

(b) the acquisition of real property or any interest in real property, unless the acquisition is integral to a project authorized under this part and the purchase is from a willing seller;

(c) providing assistance to a public water system that:

(i) does not have the financial, managerial, and technical capability to ensure compliance with the requirements of the federal act; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance; or

(d) any other activity prohibited from funding under the federal act.

(3) (a) A public water system described in subsection (2)(c) may receive assistance under this part if:

(i) the use of the assistance will ensure compliance; and

(ii) for a system that the department has determined does not have the financial, managerial, or technical capability to ensure compliance with the federal act, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures, as determined necessary by the department to ensure compliance.

(b) Prior to providing assistance to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance pursuant to the federal act, the department shall determine whether the provisions of subsection (2)(c)(i) apply to the system."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 29, 2011

CHAPTER NO. 298

[SB 99]

AN ACT AUTHORIZING PAYMENT OF A COMMISSION TO LICENSE AGENTS WHO SELL TICKETS FOR CERTAIN HUNTING LICENSE LOTTERIES; AMENDING SECTIONS 87-1-271 AND 87-2-903, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-271, MCA, is amended to read:

"87-1-271. Annual lottery of hunting licenses — proceeds dedicated to hunting access enhancement. (1) The commission may issue through a lottery one license each year for each of the following:

(a) deer;

(b) elk;

(c) shiras moose;

(d) mountain sheep;

(e) mountain goat;

(f) wild buffalo or bison;

(g) antelope; and

(h) mountain lion.

(2) The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive

another license for that species for the next 7 years does not apply to a person who receives a license through a lottery conducted pursuant to this section.

(3) The commission shall establish rules regarding:

(a) the conduct of the lottery authorized in this section;

(b) the use of licenses issued through the lottery; and

(c) the price of lottery tickets.

(4) ~~All~~ *Except as provided in 87-2-903, all* proceeds from a lottery conducted pursuant to this section must be used by the department for hunting access enhancement programs and law enforcement."

Section 2. Section 87-2-903, MCA, is amended to read:

"87-2-903. Compensation, fees, and duties of agents — penalty for late submission of license money. (1) License agents, except salaried employees of the department, must receive for all services rendered a commission of 50 cents for each transaction, plus any additional amount as determined *under subsection (9) and* by rules adopted pursuant to subsection ~~(9)~~ *(10)*.

(2) A license agent may charge a convenience fee of up to 3% of the total amount of a transaction if a purchase is made with a credit card or a debit card. A financial institution or credit card company may not prohibit collection of the convenience fee provided for in this subsection.

(3) Each license agent shall submit to the department the money received from the sale of licenses, less the appropriate commission and convenience fee.

(4) Each license agent shall submit to the department copies of each paper license sold.

(5) The department may charge license agents appointed after March 1, 1998, an electronic license system fee not to exceed actual costs.

(6) The department may designate classes of license agents and may establish a protocol for each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(7) For purposes of this section, the term "transaction" includes the sale of any license or permit, collection of any data or fee, or issuance of any certificate prescribed by the department.

(8) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate commission and convenience fee, by the deadline established by the department, an interest charge equal to the rate charged under 15-1-216 may be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

(9) A license agent, except for an electronic service provider, must receive a commission of 50 cents for each ticket the agent processes for a hunting license lottery held pursuant to 87-1-271.

~~(9)~~*(10)* The department may adopt rules necessary to implement this section."

Section 3. Effective date. [This act] is effective March 1, 2012.

Approved April 29, 2011

CHAPTER NO. 299

[SB 173]

AN ACT CLARIFYING THAT NOISES RESULTING FROM SHOOTING ACTIVITIES AT SHOOTING RANGES MAY NOT BE CONSIDERED TO BE PUBLIC NUISANCES; AND AMENDING SECTION 27-30-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-30-101, MCA, is amended to read:

"27-30-101. Definition of nuisance. (1) Anything ~~which~~ *that* is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or ~~which~~ *that* unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance.

(2) Nothing ~~which~~ *that* is done or maintained under the express authority of a statute ~~can~~ *may* be deemed a *public or private* nuisance.

(3) ~~No~~ *An* agricultural or farming operation, *a* place, *an* establishment, or *a* facility or any of its appurtenances or the operation ~~thereof is or becomes~~ *of those things is not or does not become* a public or private nuisance because of ~~the~~ *its* normal operation ~~thereof~~ as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(4) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance."

Approved April 29, 2011

CHAPTER NO. 300

[SB 195]

AN ACT REVISING LAWS RELATING TO THE MONTANA SEED LABORATORY; CREATING A SEED LABORATORY ADVISORY BOARD; ALLOWING THE LABORATORY TO DETERMINE APPROPRIATE FEES FOR THE COSTS OF SEED ANALYSIS; AMENDING SECTIONS 20-25-229, 80-5-126, 80-5-128, AND 80-5-139, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Seed laboratory advisory board — duties. (1) There is a seed laboratory advisory board.

(2) (a) The board consists of:

(i) five members appointed by the director of the agricultural experiment station provided for in 20-25-222; and

(ii) the director of the agricultural experiment station, serving in an ex officio, nonvoting capacity.

(b) The five members appointed by the director of the agricultural experiment station must be selected as follows:

(i) three representatives from seed industry-related organizations;

(ii) a representative of the department of agriculture; and

(iii) a representative of the agricultural experiment station.

(c) The members appointed as representatives of seed industry-related organizations may not represent the same organization.

(3) The board shall advise the director of the agricultural experiment station on matters related to the Montana seed laboratory provided for in 20-25-229, including but not limited to:

(a) rates to be charged for seed analysis;

(b) staffing levels;

(c) budget matters; and

(d) operational procedures for the laboratory.

(4) The board shall meet at least annually and may meet more frequently as needed.

(5) Board members may request reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503. The ex officio member is not entitled to travel expenses.

(6) The board is attached to the agricultural experiment station for administrative purposes. The agricultural experiment station shall establish operating procedures for the board that are consistent with the provisions of this section.

Section 2. Section 20-25-229, MCA, is amended to read:

"20-25-229. Montana seed laboratory — *purpose* — *fees.* (1) There is established as a part of the agricultural experiment station the Montana seed laboratory.

(2) The purpose of the laboratory ~~shall be the carrying on of~~ *is to conduct* effective scientific and practical research ~~and~~ *or* testing work to develop as complete and accurate ~~a knowledge~~ *an analysis* of grains and seeds as ~~possible~~ *requested*.

(3) The laboratory ~~shall be~~ *is* under the general direction of the director of the agricultural experiment station.

(4) The laboratory shall:

(a) establish procedures for submitting seed samples for analysis; and

(b) determine the appropriate fees for analytical services provided by the laboratory."

Section 3. Section 80-5-126, MCA, is amended to read:

"80-5-126. Analysis by seed laboratory — reports. The seed laboratory of the agricultural experiment station shall analyze and test seeds sold or offered or exposed for sale in this state at a time and place and to the extent the director of the agricultural experiment station ~~and the department determine~~ *determines*. The laboratory shall report to the department all violations as they appear. It may also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department."

Section 4. Section 80-5-128, MCA, is amended to read:

"80-5-128. Laboratory testing of samples — fees. *(1)* Any citizen of this state may request *that* the seed laboratory ~~to~~ examine, analyze, ~~and~~ *or* test samples of seed upon payment of the fee and compliance with ~~rules~~ *procedures* governing the submission of seed samples for that service.

(2) Samples of seed analyzed and tested must be charged for at rates established by ~~rule of the department as recommended by the agricultural experiment station~~ *the seed laboratory as provided in 20-25-229*.

(3) All fees collected by the seed laboratory must be used to defray the expenses incurred by the laboratory under this chapter *and the expenses incurred by the seed laboratory advisory board provided for in [section 1]*."

Section 5. Section 80-5-139, MCA, is amended to read:

"80-5-139. Rules — promulgated by department. (1) The department is authorized to promulgate necessary rules as authorized by this part. All rules are to be promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act.

(2) Rules may address but are not limited to the following subjects:

(a) designation of kinds of seed as agricultural, vegetable, flower, or indigenous;

(b) designation of kinds of seed that must be labeled as to variety name;

(c) designation of kinds and varieties of flower seeds that may be labeled according to type and performance characteristics;

(d) standards for determining and stating pure live seed, germination, or viability;

(e) plants to be designated as weeds, restricted weeds, and prohibited weeds and standards for allowing weeds and restricted weeds in seeds;

(f) procedures for implementing the administrative provisions of 80-5-136;

(g) procedures for implementing and administering civil penalties, including establishing a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under 80-5-136;

(h) procedures for submitting applications for licensing and establishing the period for which licenses are issued under 80-5-130;

(i) minimum standards for equipment and handling procedures for facilities that require licensing, including sellers and distributors of agricultural seed, seed labelers, and conditioning plants;

(j) standards that restrict or exempt from restriction the holding and movement of screenings, when in the public interest; *and*

(k) recordkeeping requirements for persons who handle agricultural, vegetable, flower, or indigenous seeds, including file samples of seed for each lot handled for a period of time up to 2 years.

~~(3) The department may promulgate rules related to the operation of the state seed laboratory. The rules may include but are not limited to procedures for submitting seed samples and rates charged for seed analysis.~~"

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 15, and the provisions of Title 2, chapter 15, part 15, apply to [section 1].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 29, 2011

CHAPTER NO. 301

[SB 234]

AN ACT REVISING THE CONDITIONS UNDER WHICH A MUNICIPALITY MAY PROVIDE GARBAGE AND SOLID WASTE SERVICES; AMENDING SECTIONS 7-2-4736 AND 7-13-4107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4736, MCA, is amended to read:

"7-2-4736. Preservation of existing garbage or solid waste service in ~~the~~ event of annexation. ~~(1)~~ A municipality that annexes or incorporates additional area ~~receiving garbage and solid waste disposal service by~~ *within the service area of* a motor carrier authorized by the public service commission to ~~conduct such~~ *provide that* service may not provide *exclusive* ~~competitive or similar~~ garbage and solid waste disposal service *or impose charges or assessments for services not provided* to any person or business located in the *annexed or incorporated* area ~~for 5 years following annexation except:~~

~~(a) upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area; or~~

~~(b) after the expiration of 5 years, if a majority of the residents of the annexed or incorporated area sign a petition requesting the municipality to provide the service.~~

~~(2) If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area or, after the expiration of 5 years, if a majority of the residents sign a petition requesting service from the municipality, the municipality may provide garbage and solid waste disposal service to the entire annexed or incorporated area.~~

~~(3) For the purposes of determining whether an existing motor carrier provides adequate service, those services provided by the carrier prior to annexation are considered adequate services.~~ *except upon a proper showing to the public service commission that the existing carrier is unable to or refuses to provide adequate service to the annexed or incorporated area.*"

Section 2. Section 7-13-4107, MCA, is amended to read:

"7-13-4107. Protection of private waste disposal service in municipality. A municipality, as of January 1, 1979, that receives garbage and solid waste disposal services from a private motor carrier authorized by the public service commission to provide that service may not, by ordinance or otherwise, ~~elect to~~ *elect to* provide exclusive garbage and solid waste service ~~unless~~ *until* the municipality ~~pays~~ *first fully compensates* the private motor carrier *for the resulting damage to its business*. ~~fair market value for the carrier's equipment or unless the municipality delays commencing the public service for a period of 5 years from the date of the decision by the municipality to provide the garbage and solid waste services. The private motor carrier must be given notice of the decision by the municipality to provide exclusive garbage and solid waste services no later than 10 days after the decision has been made by the municipality.~~"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 29, 2011

CHAPTER NO. 302

[SB 267]

AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY COMPLETE CERTAIN TOTAL MAXIMUM DAILY LOADS BY 2012 FOR THREATENED OR IMPAIRED WATER BODIES; REQUIRING REPORTING OF TOTAL MAXIMUM DAILY LOAD PROGRESS TO THE ENVIRONMENTAL QUALITY COUNCIL; AND AMENDING SECTION 75-5-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-703, MCA, is amended to read:

"75-5-703. Development and implementation of total maximum daily loads. (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) ~~Within 15 years from May 5, 1997, the department shall develop TMDLs for all water bodies on the list of waters that are threatened or impaired, as that list read on May 5, 1997. This provision does not apply to water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702. The department shall establish a schedule for completing the TMDLs within the 15-year period established by this subsection.~~ The *department shall establish a* schedule ~~must also provide~~ *that provides* a reasonable timeframe for TMDL development for impaired and threatened water bodies that are ~~listed subsequent to May 5, 1997, and are prioritized as set forth in 75-5-702~~ *on the most recent list prepared pursuant to 75-5-702. On or before July 1 of each even-numbered year, the department shall report the progress in completing TMDLs and the current schedule for completion of TMDLs for the water bodies that remain on the list to the environmental quality council*.

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

(a) incorporate the TMDL into its current continuing planning process;

(b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and

(c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall, in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue if those activities are conducted in accordance with reasonable land, soil, and water conservation practices;

(d) for existing nonpoint source activities, the department shall continue to use educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312."

Approved April 29, 2011

CHAPTER NO. 303

[SB 296]

AN ACT INCREASING THE CIVIL PENALTY FOR VIOLATION OF THE MONTANA QUARANTINE AND PEST MANAGEMENT ACT; AMENDING SECTION 80-7-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-404, MCA, is amended to read:

"80-7-404. Penalty. (1) A person who violates the quarantines, procedures, or rules of the department adopted under 80-7-402 commits a civil offense and is subject to a civil penalty of not more than ~~$1,000~~ *$5,000* for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this part. A civil penalty collected under this section must be deposited in the general fund.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed ~~$1,000~~ *$5,000*, for initial and subsequent offenses; and

(b) other matters necessary for the enforcement of civil penalties.

(4) This section may not be construed as requiring the department or its agents to report violations of 80-7-402 when the department believes that the public interest will be best served by a suitable notice of warning."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 29, 2011

CHAPTER NO. 304

[SB 311]

AN ACT CLARIFYING THE TERMS OF OFFICE AND YEARS SERVED FOR OFFICIALS ELECTED TO AND CANDIDATES SEEKING NOMINATION FOR OFFICES THAT ARE CONSTITUTIONALLY TERM-LIMITED; EXTENDING RULEMAKING AUTHORITY; AND AMENDING SECTION 13-10-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-201, MCA, is amended to read:

"13-10-201. Declaration for nomination — *term limitations.* (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of Title 13, chapter 14, shall file a declaration for nomination with the secretary of state or election administrator. A candidate may not file for more than one public office. Each candidate for governor shall file a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. Unless filed electronically with the secretary of state, the declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party. For a partisan election, an elector may not file a declaration for more than one party's nomination.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) (a) Except as provided in 13-10-211 and subsection (6)(b) of this section, a candidate's declaration for nomination must be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(b) For an election held pursuant to 13-1-104(1)(a) or 13-1-107(1), a candidate's declaration for nomination must be filed no sooner than 145 days before the election in which the office first appears on the ballot and no later than 5 p.m., 85 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(8) For the purposes of implementing Article IV, section 8, of the Montana constitution, the secretary of state shall apply the following conditions:

(a) A term of office for an official serving in the office or a candidate seeking the office is considered to begin on January 1 of the term for which the official is

elected or for which the candidate seeks election and end on December 31 of the term for which the official is elected or for which the candidate seeks election.

(b) A year is considered to start on January 1 and end on the following December 31.

(c) "Current term", as used in Article IV, section 8, of the Montana constitution, has the meaning provided in 2-16-214."

Approved April 29, 2011

CHAPTER NO. 305

[SB 340]

AN ACT CLARIFYING COUNTY ENFORCEMENT RELATED TO A PERSON, ENTITY, OR REPRESENTATIVE OF A PERSON OR ENTITY THAT HAS ENTERED INTO A FIRE HAZARD REDUCTION AGREEMENT; AMENDING SECTION 7-33-2205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2205, MCA, is amended to read:

"7-33-2205. Establishment of fire season — permit requirements — reimbursement of costs. (1) *(a)* ~~The~~ *Subject to the provisions of Title 76, chapter 13, part 1, the* county governing body may in its discretion establish ~~fire~~ *controlled burning* seasons annually, during which*, subject to 76-13-121,* a person may not ignite or set a fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any residential or commercial property, forest, range, or croplands subject to the provisions of this part without having obtained an official written permit or permission to ignite or set a fire from the recognized protection agency for that protection area.

(b) If a person, entity, or representative of a person or entity has entered into a fire hazard reduction agreement pursuant to Title 76, chapter 13, part 4, and is complying with that agreement, open burning may be conducted, subject to 76-13-121, between October 1 and April 30 without obtaining a written permit or permission to set a fire. The person, entity, or representative of a person or entity shall:

(i) obtain air quality and ventilation forecasts before igniting or setting the fire; and

(ii) notify the county of the location of the burn area.

(2) A permit or permission is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable structure and for which a suitable source of extinguishing the fire is available.

(3) A person who purposely ignites a fire in violation of this section shall reimburse the county governing body or recognized protection agency for costs incurred for any fire suppression activities resulting from the illegal fire, as provided in 50-63-103."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 29, 2011

CHAPTER NO. 306

[SB 376]

AN ACT EXTENDING THE MATURITY DATE TIME LIMIT ON CERTAIN UNITED STATES TREASURY BILLS, NOTES, AND BONDS USED AS SECURITY FOR SCHOOL DISTRICT CONSTRUCTION BONDS; AMENDING SECTION 7-6-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-202, MCA, is amended to read:

"7-6-202. Investment of public money in direct obligations of United States. (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) obligations of the following agencies of the United States, subject to the limitations in subsection (2):

(i) federal home loan bank;

(ii) federal national mortgage association;

(iii) federal home mortgage corporation; and

(iv) federal farm credit bank.

(2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

(3) The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;

(b) the fund consists only of eligible securities as described in this section;

(c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(d) the fund is listed in a national financial publication under the category of "money market mutual funds", showing the fund's average maturity, yield, and asset size; and

(e) the fund's average maturity does not exceed 397 days.

(4) Except as provided in ~~subsection~~ *subsections* (5) *and (6)*, an investment authorized in this part may not have a maturity date exceeding 5 years, except

when the investment is used in an escrow account to refund an outstanding bond issue in advance.

(5) An investment of the assets of a local government group self-insurance program established pursuant to 2-9-211 or 39-71-2103 in an investment authorized in this part may not have a maturity date exceeding 10 years, and the average maturity of all those authorized investments of a local government group self-insurance program may not exceed 6 years.

(6) An investment in zero-coupon United States government treasury bills, notes, and bonds purchased as a sinking fund investment for a balloon payment on qualified construction bonds described in 17-5-116(1) may have a maturity date exceeding 5 years if:

(a) the maturity date of the United States government treasury bills, notes, and bonds is on or before the date of the balloon payment; and

(b) the school district trustees provide written consent.

~~(6)~~*(7)* This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 29, 2011

CHAPTER NO. 307

[HB 627]

AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR A JUDICIAL WAIVER OF NOTIFICATION; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATING TO PARENTAL NOTIFICATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-201, 50-20-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211, 50-20-212, AND 50-20-215, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Parental Notice of Abortion Act of 2011".

Section 2. Legislative purpose and findings. (1) The legislature finds that:

(a) immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;

(b) the medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature;

(c) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(d) parents ordinarily possess information essential to a physician in the exercise of the physician's best medical judgment concerning the minor;

(e) parents who are aware that their minor daughter has had an abortion may better ensure that the daughter receives adequate medical care after the abortion; and

(f) parental consultation is usually desirable and in the best interests of the minor.

(2) The purpose of [sections 1 through 9] is to further the important and compelling state interests of:

(a) protecting minors against their own immaturity;

(b) fostering family unity and preserving the family as a viable social unit;

(c) protecting the constitutional rights of parents to rear children who are members of their household; and

(d) reducing teenage pregnancy and unnecessary abortion.

Section 3. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Actual notice" means the giving of notice directly in person or by telephone.

(2) "Coerce" means to restrain or dominate the choice of a minor female by force, threat of force, or deprivation of food and shelter.

(3) "Emancipated minor" means a person under 18 years of age who is or has been married or who has been granted an order of limited emancipation by a court as provided in 41-3-438.

(4) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or a condition for which a delay in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.

(5) "Minor" means a female under 16 years of age who is not an emancipated minor.

(6) "Physical abuse" means any physical injury intentionally inflicted by a parent or legal guardian on a child.

(7) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

(8) "Sexual abuse" has the meaning given in 41-3-102.

Section 4. Notice of parent required. A physician may not perform an abortion upon a minor unless the physician has given at least 48 hours' actual notice to one parent or to the legal guardian of the pregnant minor of the physician's intention to perform the abortion. The actual notice may be given by a referring physician. The physician who performs the abortion must receive the written statement of the referring physician certifying that the referring physician has given actual notice. If actual notice is not possible after a reasonable effort, the physician or the physician's agent shall give alternate notice as provided in [section 5].

Section 5. Alternative notification. In lieu of the actual notice required by [section 4], notice may be made by certified mail addressed to the parent at the usual place of residence of the parent with return receipt requested and delivery restricted to the addressee, which means a postal employee may deliver the mail only to the authorized addressee. Time of delivery is considered to occur at noon on the next day on which regular mail delivery takes place after mailing.

Section 6. Exceptions. Notice is not required under [section 4 or 5] if:

(1) the attending physician certifies in the patient's medical record that a medical emergency exists and there is insufficient time to provide notice;

(2) notice is waived, in writing, by the person entitled to notice; or

(3) notice is waived under [section 8].

Section 7. Coercion prohibited. A parent, a guardian, or any other person may not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used to obtain an abortion.

Section 8. Procedure for judicial waiver of notice. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) The minor may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person's own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to assigned counsel and shall order the office of state public defender, provided for in 47-1-201, to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds that the petitioner is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition.

Section 9. Criminal and civil penalties. (1) A person convicted of performing an abortion in violation of [section 4 or 5] shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(2) Failure to provide the notice required under [section 4 or 5] is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to notify the parents or guardian. A civil action may be based on a claim that the failure to notify was the result of a violation of the appropriate legal standard of care. Failure to provide notice is presumed to be actual malice pursuant to the provisions of 27-1-221. [Sections 1 through 9] do not limit the common-law rights of parents.

(3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than $500 and not more than $50,000 and be imprisoned in the state prison for a term not less than 10 days and not more than 5 years, or both.

(4) A person not authorized to receive notice under [section 5] who signs a notice of waiver as provided in [section 6(2)] is guilty of a misdemeanor.

Section 10. Section 41-1-405, MCA, is amended to read:

"41-1-405. Emergencies and special situations. (1) A health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) A health professional may render nonemergency services to minors for conditions that will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) Consent may not be required of a minor who does not possess the mental capacity or who has a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal guardians, if a physician determines that the health service should be given.

(4) Self-consent of minors does not apply to sterilization or abortion, except as provided in ~~Title 50, chapter 20, part 2~~ *[sections 1 through 9]*."

Section 11. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system — structure and scope of services — assignment of counsel at public expense. (1) There is a statewide public defender system, which must deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) ~~Beginning July 1, 2006, when~~ *When* a court orders the office to assign counsel, the office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the office makes appropriate assignments in a timely manner.

(4) ~~Beginning July 1, 2006, a~~ *A* court may order the office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice of Abortion Act, as provided in ~~50-20-212~~ *[section 8]*;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 12. Repealer. The following sections of the Montana Code Annotated are repealed:

50-20-201. Short title.

50-20-202. Legislative purpose and findings.

50-20-203. Definitions.

50-20-204. Notice of parent required.

50-20-205. Alternate notification.

50-20-208. Exceptions.

50-20-209. Coercion prohibited.

50-20-211. Reports.

50-20-212. Procedure for judicial waiver of notice.

50-20-215. Criminal and civil penalties.

Section 13. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through 9].

Section 14. Coordination instruction. If both Senate Bill No. 97 and [this act] are passed and approved, then [this act] is void.

Section 15. Effective date. If approved by the electorate, [this act] is effective January 1, 2013.

Section 16. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

☐ FOR requiring parental notification prior to abortion for a minor, providing for judicial waiver of notification, repealing prior statutes, and providing penalties.

☐ AGAINST requiring parental notification prior to abortion for a minor, providing for judicial waiver of notification, repealing prior statutes, and providing penalties.

CHAPTER NO. 308

[HB 638]

AN ACT DENYING CERTAIN STATE-FUNDED SERVICES TO ILLEGAL ALIENS; ESTABLISHING PROCEDURES FOR DETERMINING A PERSON'S CITIZENSHIP STATUS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Certain state services denied to illegal aliens. (1) To the extent allowed by federal law and the Montana constitution and notwithstanding any other state law, a state agency may not provide a state service to an illegal alien and shall comply with the requirements of this section.

(2) To determine whether an applicant for a state service is an illegal alien, the agency may use the systematic alien verification for entitlements program provided by the United States department of homeland security or any other lawful method of making the determination.

(3) A state agency shall notify appropriate personnel in immigration and customs enforcement under the United States department of homeland security or its successor of any illegal alien applying for a state service.

(4) An agency shall require a person seeking a state service to provide proof of United States citizenship or legal alien status.

(5) A state agency shall execute any written agreement required by federal law to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Agency" means a department, board, commission, committee, authority, or office of the legislative or executive branches of state government, including a unit of the Montana university system.

(b) "Illegal alien" means an individual who is not a citizen of the United States and who has unlawfully entered or remains unlawfully in the United States.

(c) "State service" means a payment of money, the grant of a state license or permit, or the provision of another valuable item or service under any of the following programs and provisions of law:

(i) employment with a state agency;

(ii) qualification as a student in the university system for the purposes of a public education, as provided in 20-25-502;

(iii) student financial assistance, as provided in Title 20, chapter 26;

(iv) issuance of a state license or permit to practice a trade or profession, as provided in Title 37;

(v) unemployment insurance benefits, as provided in Title 39, chapter 51;

(vi) vocational rehabilitation, as provided in Title 53, chapter 7;

(vii) services for victims of crime, as provided in Title 53, chapter 9;

(viii) services for the physically disabled, as provided in Title 53, chapter 19, parts 3 and 4;

(ix) a grant, as provided in Title 90.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 4, and the provisions of Title 1, chapter 1, part 4, apply to [section 1].

Section 3. Coordination instruction. If House Bill No. 534 is passed and approved, then [this act] is void.

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. If approved by the electorate, [this act] is effective January 1, 2013.

Section 6. Applicability. [This act] applies to the provision of a state service, as defined in [section 1], applied for or intended to be made on or after January 1, 2013.

Section 7. Submission to the electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

☐ FOR denying certain state services to illegal aliens.

☐ AGAINST denying certain state services to illegal aliens.

CHAPTER NO. 309

[SB 172]

AN ACT CLASSIFYING CERTAIN ENERGY STORAGE FACILITIES AS CLASS FOURTEEN PROPERTY; EXEMPTING CLASS FOURTEEN ENERGY STORAGE FACILITIES FROM THE PROVISIONS OF THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, 75-20-104, AND 75-20-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property — description — taxable percentage. (1) Except as provided in subsection (2), class seven property includes:

(a) all property owned by cooperative rural electrical associations that serve less than 95% of the electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141~~(1)(a)~~*(1)(c)*;

(b) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) Class seven property does not include wind generation facilities*,* ~~and~~ biomass generation facilities*, and energy storage facilities* classified under 15-6-157.

(3) Class seven property is taxed at 8% of its market value."

Section 2. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both~~,~~*;* ~~including,~~

(b) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives~~.~~*;* ~~However,~~

(c) rural electric cooperatives' property, except wind generation facilities*,* ~~and~~ biomass generation facilities*, and energy storage facilities* classified under 15-6-157 *and property used for headquarters, office, shop, or other similar facilities*, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative*;* ~~is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.~~

~~(b)~~*(d)* allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5); and

~~(c)~~*(e)* centrally assessed companies' allocations except:

(i) electrical generation facilities classified under 15-6-156;

(ii) all property classified under 15-6-157;

(iii) all property classified under 15-6-158 and 15-6-159;

(iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

(v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

(vi) railroad transportation property included in 15-6-145;

(vii) airline transportation property included in 15-6-145; and

(viii) telecommunications property included in 15-6-156.

(2) Class nine property is taxed at 12% of market value."

Section 3. Section 15-6-156, MCA, is amended to read:

"15-6-156. Class thirteen property — description — taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(g), class thirteen property includes:

(a) electrical generation facilities, except wind generation facilities*,* ~~and~~ biomass generation facilities*, and energy storage facilities* classified under 15-6-157, of a centrally assessed electric power company;

(b) electrical generation facilities, except wind generation facilities*,* ~~and~~ biomass generation facilities*, and energy storage facilities* classified under 15-6-157, owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(c) noncentrally assessed electrical generation facilities, except wind generation facilities*,* ~~and~~ biomass generation facilities*, and energy storage*

facilities classified under 15-6-157, owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or 15-6-157;

(c) allocations of electric power company property under 15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone associations and classified under 15-6-135;

(f) property owned by organizations providing telecommunications services and classified under 15-6-135; and

(g) generation facilities that are exempt under 15-6-225.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

Section 4. Section 15-6-157, MCA, is amended to read:

"15-6-157. Class fourteen property — description — taxable percentage. (1) Class fourteen property includes:

(a) wind generation facilities of a centrally assessed electric power company;

(b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

(d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137;

(e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed electric power company;

(f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by any electrical energy producer;

(h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by cooperative rural electric associations described under 15-6-137;

(i) energy storage facilities of a centrally assessed electric power company;

(j) energy storage facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(k) noncentrally assessed energy storage facilities owned or operated by any electrical energy producer;

(l) energy storage facilities owned or operated by cooperative rural electrical associations described under 15-6-137;

(m) battery energy storage systems that comply with federal standards on the manufacture and installation of the systems that are owned and operated by an electrical energy storage producer, electrical energy producer, or energy trading entity or by the owner or operator of an electrical vehicle charging site;

~~(i)~~*(n)* all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(j)~~*(o)* all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(k)~~*(p)* all property of a biomass gasification facility, as defined in 15-24-3102;

~~(l)~~*(q)* all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection ~~(1)(o)~~ *(1)(t)* of this section, that sequesters carbon dioxide;

~~(m)~~*(r)* all property of an ethanol production facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(n)~~*(s)* all property of a geothermal facility, as defined in 15-24-3102;

~~(o)~~*(t)* all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that sequesters carbon dioxide, as required by 15-24-3111(4)(c);

~~(p)~~*(u)* all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

~~(q)~~*(v)* all property of a natural gas combined cycle facility;

~~(r)~~*(w)* equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;

~~(s)~~*(x)* high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:

(i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;

(ii) are certified under the Montana Major Facility Siting Act; and

(iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;

~~(t)~~*(y)* all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection

(1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;

~~(u)~~*(z)* the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007.

(2) (a) The qualified portion of an alternating current transmission line in subsection ~~(1)(u)~~ *(1)(z)* is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1) that are located in Montana.

(b) The department of revenue shall classify the total value of an alternating current transmission line in accordance with the determination made by the department of environmental quality pursuant to subsection (2)(a).

(c) The owner of property described under this subsection (2) shall disclose the location of the generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not required to disclose financial terms and conditions of contracts beyond that needed for classification.

(3) Class fourteen property does not include facilities:

(a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, was not paid during the construction phase; or

(b) that are exempt under 15-6-225.

(4) For the purposes of this section, the following definitions apply:

(a) "Biomass generation facilities" means any combination of boilers, generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from the burning of organic material other than coal, petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas or other fuels allowed for ignition and to stabilize boiler operations.

(b) (i) "Compressed air energy storage" means the conversion of electrical energy to compressed air by using an electrically powered turbocompressor for storage in vessels designed for that purpose and in the earth, including but not limited to deep saline formations, basalt formations, aquifers, depleted oil or gas reservoirs, abandoned mines, and mined rock cavities.

(ii) The term includes the conversion of compressed air into electrical energy by using turboexpander equipment and electrical generation equipment.

(c) (i) "Energy storage facilities" means hydroelectric pumped storage property, compressed air energy storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of energy storage facilities directly connected to the electrical power grid and associated property, appurtenant land and improvements, and personal property that are designed to:

(A) receive and store electrical energy as potential energy; and

(B) convert the stored energy into electrical energy for sale as an energy commodity or as electricity services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid, including but not limited to frequency regulation ancillary services and frequency control.

(ii) The term includes only property that in the aggregate can store at least 0.25 megawatt hour and has a power rating of at least 1 megawatt for a period of at least 0.25 hour.

(iii) The term does not include property, including associated property and appurtenant land and improvements, that is used to hold water in ponds, reservoirs, or impoundments related to hydroelectric pumped storage as defined in subsection (4)(e).

(d) "Flywheel storage" means a process that stores energy kinetically in the form of a rotating flywheel. Energy stored by the rotating flywheel can be converted to electrical energy through the flywheel's integrated electric generator.

(e) "Hydroelectric pumped storage" means a process that converts electrical energy to potential energy by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through hydraulic turbines and generate electrical energy.

(f) "Regenerative fuel cell" means a device that produces hydrogen and oxygen from electricity and water and alternately produces electrical energy and water from stored hydrogen and oxygen.

~~(b)~~*(g)* "Wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection ~~(1)(s), (1)(t), or (1)(u)~~ *(1)(x), (1)(y), or (1)(z)*, as applicable, based on an application provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection ~~(1)(s), (1)(t), or (1)(u)~~ *(1)(x), (1)(y), or (1)(z)*, the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(6) Class fourteen property is taxed at 3% of its market value."

Section 5. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility, ~~or~~ biomass generation facility, *or energy storage facility*, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a newly acquired

easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(vi) does not include an energy storage facility, as defined in 15-6-157;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant*, except that the term does not include a compressed air energy storage facility, as defined in 15-6-157*; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(12) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; or

(d) changing structure spacing, design, or guying.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 6. Section 75-20-201, MCA, is amended to read:

"75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of compliance issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter. *The construction or installation of an energy storage facility, as defined in 15-6-157, is not considered an energy-related project under the provisions of this chapter. A certificate for the construction or installation of an energy storage facility is not required under this chapter.*

(6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(7) All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 7. Applicability. [Sections 1 through 4] apply to tax years beginning after December 31, 2011.

Approved April 30, 2011

CHAPTER NO. 310

[SB 418]

AN ACT PROHIBITING THE STATE OR FEDERAL GOVERNMENT FROM MANDATING THE PURCHASE OF HEALTH INSURANCE COVERAGE OR IMPOSING PENALTIES FOR DECISIONS RELATED TO THE PURCHASE OF HEALTH INSURANCE COVERAGE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 and 2] may be cited as the "Montana Health Care Freedom Act".

Section 2. Health insurance purchase mandate prohibited — exceptions. (1) The state or federal government may not:

(a) mandate or require a person or entity to purchase health insurance coverage as defined in 33-22-140; or

(b) impose a penalty, tax, fee, or fine of any type if a person or entity declines to purchase health insurance coverage.

(2) This section does not apply to a requirement to purchase health insurance coverage that is imposed by:

(a) a court when an individual or entity is a named party in a judicial dispute;

(b) the department of public health and human services as part of a child support enforcement action; or

(c) the Montana university system as a requirement for students.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 and 2].

Section 4. Effective date. If approved by the electorate, [this act] is effective January 1, 2013.

Section 5. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

☐ FOR prohibiting the state or federal government from mandating the purchase of health insurance or imposing penalties for decisions related to purchasing health insurance.

☐ AGAINST prohibiting the state or federal government from mandating the purchase of health insurance or imposing penalties for decisions related to purchasing health insurance.

CHAPTER NO. 311

[SB 426]

AN ACT CREATING THE TREASURE STATE TAXPAYER DIVIDEND PROGRAM; ALLOWING TAXPAYERS A REFUND OF SURPLUS STATE GOVERNMENT FUND BALANCE THROUGH AN INCOME TAX CREDIT; AND PROVIDING THAT THE TAX CREDIT IS BASED UPON THE RELATIVE AMOUNTS OF ALL PROPERTY TAXES PAID ON A CLAIMANT'S PRINCIPAL RESIDENCE AND UPON THE AMOUNT OF INDIVIDUAL INCOME TAXES THAT HAD BEEN PAID BY THE CLAIMANT; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax credits based on surplus fund balance — property tax — income tax. (1) (a) The department of administration shall certify to the budget director, by August 1 of each year, the amount of unaudited general fund balance in the prior fiscal year as recorded when the prior fiscal year statewide

accounting, budgeting, and human resource system records are closed in July. General fund balance is as recorded in the statewide accounting, budgeting, and human resource system using generally accepted accounting principles in accordance with 17-1-102(2). Tax credits are allowed under this section if the unaudited general fund balance in the fiscal year exceeds 125% of the budgeted general fund balance for that fiscal year [and if the tax rate specified in 15-6-138(3)(a)(ii) has been in effect for at least 1 tax year]. Tax credits are not allowed under this section unless the excess balance is at least $5 million. One-half of the amount in excess of 125% must be distributed in the form of individual income tax credits related to the property taxes paid on the taxpayer's principal residence and related to the taxpayer's individual income tax paid.

(b) There is a credit against taxes imposed by this chapter equal to the amount determined under subsection (2).

(2) (a) If a tax credit is allowed under subsection (1)(a), the department shall determine the percentage by dividing the amount to be refunded by the amounts of the total collections that are attributable to total statewide property tax that was assessed, other than local option vehicle tax under 61-3-537, and total individual income tax collections for the same fiscal year as the general fund balance.

(b) The property tax share of the excess balance must be reimbursed to property taxpayers based upon an amount of each taxpayer's property taxes paid on the taxpayer's principal residence in the taxpayer's income tax year. To determine the amount, the department shall multiply the percentage determined in subsection (2)(a) by the individual's total property taxes paid on the principal residence in the prior year.

(c) The income tax share of the excess balance must be distributed to taxpayers as a credit under this chapter based upon an amount each taxpayer paid in Montana individual income taxes pursuant to 15-30-2103 in the immediately preceding tax year. To determine the amount, the department shall multiply the percentage determined in subsection (2)(a) by the individual's income taxes paid in the prior year.

(3) Only one claim may be made with respect to any property.

(4) A claim is not allowed under this section if there are delinquent property taxes owed on the principal residence.

(5) If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even if the claimant has no income that is taxable under this chapter.

(6) The department may adopt rules to implement and administer this section.

(7) As used in this section, the following definitions apply:

(a) "Budgeted general fund balance" is a projected general fund balance calculated by the legislative fiscal analyst by August 1 for each fiscal year. In determining the projected general fund balance, the legislative fiscal analyst shall use the appropriate fiscal year amounts as utilized by the legislature in developing the biennial budget. The fiscal year amounts are anticipated revenues and transfers that include the impacts of enacted legislation, established level of appropriations and transfers, anticipated supplemental appropriations, and anticipated reversions. To calculate the projected balance, the legislative fiscal analyst shall add the unassigned fund balance from the

most recent completed fiscal year plus the anticipated revenues and transfers less the level of appropriations and transfers, supplemental appropriations, and anticipated reversions for the most recent completed fiscal year.

(b) "Principal residence" means a class four residential dwelling that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home that is located in Montana and occupied by the owner for at least 7 months during the tax year and includes as much of the surrounding land, not exceeding 5 acres, as is reasonably necessary for its use as a dwelling.

(8) This section may be cited as the "Treasure State Taxpayer Dividend Program".

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

Section 3. Contingent voidness. If Senate Bill No. 372 is not passed and approved or if Senate Bill No. 372 is rendered void, then the bracketed language in [section 1(1)(a)] is void.

Section 4. Effective date. If approved by the electorate, [this act] is effective January 1, 2013.

Section 5. Submission to electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

☐ FOR contingently providing taxpayers refunds of surplus state government general fund balance through an income tax credit based upon property and individual income taxes paid.

☐ AGAINST contingently providing taxpayers refunds of surplus state government general fund balance through an income tax credit based upon property and individual income taxes paid.

CHAPTER NO. 312

[HB 604]

AN ACT PROVIDING FOR FUND TRANSFERS AND AN APPROPRIATION; AUTHORIZING FUND TRANSFERS FROM THE TELECOMMUNICATIONS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT ACCOUNT, THE OLDER MONTANANS TRUST FUND, AND THE FIRE SUPPRESSION ACCOUNT TO THE GENERAL FUND; AUTHORIZING FUND TRANSFERS FROM THE MOTOR VEHICLE AND RECYCLING ACCOUNT, THE ORPHAN SHARE ACCOUNT, THE COAL BED METHANE PROTECTION ACCOUNT, AND THE OIL AND GAS CONSERVATION ACCOUNT TO THE GUARANTEE ACCOUNT FOR DISTRIBUTION TO SCHOOL DISTRICTS; AUTHORIZING A FUND TRANSFER FROM THE OLDER MONTANANS TRUST FUND TO THE HEALTH AND MEDICAID INITIATIVES ACCOUNT; ~~AUTHORIZING A FUND TRANSFER TO THE OLD FUND WORKERS' COMPENSATION ACCOUNT FROM THE GENERAL FUND AND THE OLD FUND LIABILITY ACCOUNT;~~ REVISING THE TRANSFER TO THE RESEARCH AND COMMERCIALIZATION STATE SPECIAL REVENUE ACCOUNT FOR FISCAL YEARS 2012 AND 2013; ~~IMPOSING A PREMIUM FEE ON CERTAIN WORKERS' COMPENSATION POLICIES; CREATING A STATE SPECIAL REVENUE ACCOUNT;~~ AMENDING SECTIONS 15-35-108, ~~39-71-2352,~~

52-3-115, 53-19-310, 75-10-532, 75-10-743, 76-13-150, 76-15-904, AND 82-11-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transfer of funds to guarantee account. (1) By August 15, 2011, the state treasurer shall transfer $2.5 million from the account that is established for the motor vehicle recycling and disposal program under the provisions of 75-10-532 to the guarantee account provided for in 20-9-622.

(2) By August 15, 2011, the state treasurer shall transfer $4.4 million from the orphan share account provided for in 75-10-743 to the guarantee account provided for in 20-9-622.

(3) By August 15, 2011, the state treasurer shall transfer $8.5 million from the coal bed methane protection account provided for in 76-15-904 to the guarantee account provided for in 20-9-622.

(4) By August 15, 2011, the state treasurer shall transfer $12 million from the board of oil and gas conservation account provided for in 82-11-135 to the guarantee account provided for in 20-9-622.

Section 2. Transfer of funds to general fund. (1) By August 15, 2011, the state treasurer shall transfer $1.85 million from the telecommunications services and specialized telecommunications equipment account provided for in 53-19-310 to the general fund.

(2) The state treasurer shall transfer $6 million from the older Montanans trust fund, provided for in 52-3-115, to the general fund for the biennium beginning July 1, 2011.

(3) By August 15, 2011, the state treasurer shall transfer $3 million from the fire suppression account provided for in 76-13-150 to the general fund.

Section 3. Transfer of funds to health and medicaid initiative account. For the biennium beginning July 1, 2011, the state treasurer shall transfer $3,166,502 from the older Montanans trust fund provided for in 52-3-115 to the health and medicaid initiatives account provided for in 53-6-1201.

Section 4. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of [5.8% through September 30, 2013, and beginning October 1, 2013, the amount of] 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $625,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $1.275 million to the research and commercialization state special revenue account created in 90-3-1002*, of which $375,000 per year is appropriated for fiscal years 2012 and 2013 to the department of commerce for the small business state matching grant program authorized in 90-1-117 to provide matching grants for small business innovation research and small business technology transfer, $125,000 per year is appropriated for fiscal years 2012 and 2013 to the high-performance supercomputing program in the department of commerce, and $300,000 per year is appropriated for fiscal years 2012 and 2013 to the board of regents for the development of energy and natural resources doctoral programs at Montana tech of the university of Montana*;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2013—sec. 5, Ch. 459, L. 2009.)

15-35-108. (Effective July 1, 2013) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The

trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of [5.8% through September 30, 2013, and beginning October 1, 2013, the amount of] 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) $3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) $125,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $425,000 for certified regional development corporations;

(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2019—secs. 2, 3, Ch. 459, L. 2009.)

15-35-108. (Effective July 1, 2019) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Beginning July 1, 2012, any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 5. ~~Section 39-71-2352, MCA, is amended to read:~~

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit — authorizing transfer of money. ~~(1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.~~

~~(2) The state fund shall:~~

~~(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately~~

~~determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;~~

~~(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and~~

~~(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.~~

~~(3) The state fund may not spend more than $1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.~~

~~(4) As used in this section, "adequately funded" means the present value of:~~

~~(a) the total cost of future benefits remaining to be paid; and~~

~~(b) the cost of administering the claims.~~

~~(5) An amount of funds in excess of the adequate funding amount established in subsection (4), based on audited financial statements adjusted for unrealized gains and losses, must be transferred to the general fund.~~

~~(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims *from the account* for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321 *to the old fund account provided for in [section 14] if the amount in [section 13 or 14] is insufficient*.~~

~~(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid."~~

Section 6. Section 52-3-115, MCA, is amended to read:

"52-3-115. (Temporary) Older Montanans trust fund. (1) There is an older Montanans trust fund within the permanent fund type. The trust fund is subject to legislative appropriation as provided in this section.

(2) (a) The money in the fund may be used to create new, innovative services or to expand existing services for the benefit of Montana residents 60 years of age or older that will enable those Montanans to live an independent lifestyle in the least restrictive setting and will promote the dignity of and respect for those Montanans. The interest and income produced by the trust fund and appropriated to the department by the legislature is intended to increase services referred to in this subsection and not to supplant other sources of revenue for those programs in the trended traditional level of appropriations for those services.

(b) As used in subsection (2)(a), the phrase "trended traditional level of appropriations" means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(3) The department may accept contributions and gifts for the trust fund in money or other forms, and when accepted, the contributions and gifts must be deposited in the trust fund.

(4) Interest and income earned on money in the trust fund must be retained within the fund except as provided in this section. Until the year 2015, if assets

in the fund reach the following amounts, money may be appropriated by the legislature and used in the following amounts for the programs specified in subsection (2):

(a) When the fund balance reaches $20 million, 50% of the interest earned may be appropriated.

(b) When the fund balance reaches $50 million, 60% of the interest earned may be appropriated.

(c) When the fund balance reaches $100 million, 80% of the interest earned may be appropriated.

(5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2).

(6) The department shall provide to the legislature a biennial report of the expenditures of the money appropriated from the older Montanans trust fund as provided in 5-11-210. (Terminates June 30, 2011—sec. 82, Ch. 489, L. 2009.)

52-3-115. (Effective July 1, 2011) Older Montanans trust fund. (1) There is an older Montanans trust fund within the permanent fund type. The trust fund is subject to legislative appropriation as provided in this section.

(2) The money in the fund may be used to ~~create~~ *fund* new, innovative services or ~~to expand~~ existing services for the benefit of Montana residents 60 years of age or older that will enable those Montanans to live an independent lifestyle in the least restrictive setting and will promote the dignity of and respect for those Montanans~~.~~. ~~The interest and income produced by the trust fund and appropriated to the department by the legislature is intended to increase services referred to in this subsection and not to supplant other sources of revenue for those programs in the trended traditional level, as used in 53-6-1201, of appropriations for those services.~~

(3) The department may accept contributions and gifts for the trust fund in money or other forms, and when accepted, the contributions and gifts must be deposited in the trust fund.

(4) Interest and income earned on money in the trust fund must be retained within the fund except as provided in this section. ~~Until the year 2015, if assets in the fund reach the following amounts, money~~ *Money* may be appropriated by the legislature and used ~~in the following amounts~~ for the programs specified in subsection (2)~~:~~.

~~(a) When the fund balance reaches $20 million, 50% of the interest earned may be appropriated.~~

~~(b) When the fund balance reaches $50 million, 60% of the interest earned may be appropriated.~~

~~(c) When the fund balance reaches $100 million, 80% of the interest earned may be appropriated.~~

~~(5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2).~~

~~(6)~~*(5)* The department shall provide to the legislature a biennial report of the expenditures of the money appropriated from the older Montanans trust fund as provided in 5-11-210."

Section 7. Section 53-19-310, MCA, is amended to read:

"53-19-310. Account for telecommunications services and specialized telecommunications equipment for persons with disabilities. (1) There is an account for telecommunications services and

specialized telecommunications equipment for persons with disabilities in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; and

(b) all fees billed and collected pursuant to 53-19-311.

(2) ~~The~~ *Subject to legislative fund transfers,* money in the account is allocated to the committee for purposes of implementing this part. *Gifts and grants received by the committee as provided in 53-19-309 are not subject to legislative fund transfers.*

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account."

Section 8. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of money collected. All money received from the sale of junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees must be remitted to the state, as provided in 15-1-504. ~~The~~ *Subject to legislative fund transfers, the* money must be used for the control, collection, recycling, and disposal of junk vehicles and component parts and for the removal of abandoned vehicles."

Section 9. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9), ~~and~~ (10), *and (11),* must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

(c) unencumbered funds remaining in the abandoned mines state special revenue account;

(d) interest income on the account;

(e) funds received from settlements pursuant to 75-10-719(7); and

(f) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Except as provided in subsection (6), reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share fund and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:

(i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;

(ii) it has received a notice letter pursuant to 75-10-711; and

(iii) the department has approved the costs.

(7) (a) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(b) The department may reimburse claims from a lead liable person upon completion and department approval of a report evaluating the nature and extent of contamination and a report formulating and evaluating final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by the lead liable person for the preparation of the reports.

(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(9) (a) For the biennium beginning July 1, 2005, up to $1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final

remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than $1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the $1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(10) (a) The department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 $1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (10)(b) of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of $19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection (10)(b)(i) in order to provide a fund balance of $19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.

(11) The orphan share account is subject to legislative fund transfers."

Section 10. Section 76-13-150, MCA, is amended to read:

"76-13-150. Fire suppression account — fund transfer. (1) There is a fire suppression account in the state special revenue fund to the credit of the department.

(2) The legislature may transfer money from other funds to the account*, and the money in the account is subject to legislative fund transfers*.

(3) Funds received for restitution by private parties must be deposited in the account.

(4) Money in the account may be used only for the purpose of paying expenses for fire prevention, including fuel mitigation, grants for the purchase of fire suppression equipment for county cooperatives, and fire suppression costs.

(5) Interest earned on the balance of the account is retained in the account."

Section 11. Section 76-15-904, MCA, is amended to read:

"76-15-904. Coal bed methane protection account — use. (1) There is a coal bed methane protection account in the state special revenue fund.

(2) There must be deposited in the account the proceeds from the distribution of oil and natural gas production taxes, as provided in 15-36-331.

(3) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.

(4) Subject to the conditions of ~~subsection~~ *subsections* (5) *and (6)*, money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part.

(5) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to this part.

(6) ~~Money~~ *Subject to legislative fund transfers, money* in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in 76-15-905. (Subsection (2) terminates June 30, 2011—sec. 10, Ch. 531, L. 2001.)"

Section 12. Section 82-11-135, MCA, is amended to read:

"82-11-135. Money earmarked for board expenses. The state treasurer shall deposit all money distributed to the board under 15-36-331 and collected under this chapter in the state special revenue fund. ~~The~~ *Subject to legislative fund transfers, the* money must be used for the purpose of paying all expenses of the board and for no other purpose. The board shall use the money subject to biennial appropriations by the legislature. Income and interest from investment of the board's money in the state special revenue fund must be credited to the board."

~~**Section 13. Old fund liability account.** (1) There is an old fund liability account in the state special revenue fund established by 17-2-102 to be administered by the department of administration.~~

~~(2) Until July 1, 2013, the state fund shall deposit in the account described in subsection (1) the fees collected as provided in [section 14].~~

~~(3) Interest and income earned on money in the account must be retained within the account except as provided in this section.~~

~~(4) Beginning July 1, 2012, the state treasurer shall transfer funds in the old fund liability account on an as-needed basis into the old fund account provided for in [section 14] to pay claims for injuries occurring before July 1, 1990.~~

~~**Section 14. Old fund premium fee — assessment.** (1) Until July 1, 2013, the state fund shall pay into the old fund liability account, provided for in [section 13], a fee assessed upon net premiums. Beginning July 1, 2013, the state fund shall deposit the fees assessed upon net premiums into the old fund account.~~

~~(2) A fee must be assessed on net premiums at a rate of 2.75% and must be included in rates established in 39-71-2330.~~

~~(3) (a) For the purposes of this section, the term "net premium" has the meaning provided by the national association of insurance commissioners.~~

~~(b) For the purposes of this part, the term "old fund account" means the account in the proprietary fund type to pay claims for injuries resulting from accidents that occurred before July 1, 1990.~~

~~**Section 15. Appropriation.** (1) There is appropriated up to $2 million in fiscal year 2011 from the general fund to the department of administration on a one-time-only basis for transfer to the old fund account provided for in [section 14].~~

~~(2) There is appropriated $11 million on a one-time-only basis for the fiscal year ending June 30, 2012, to the department of administration for transfer to the old fund account for unfunded liabilities, if necessary. These funds may be used only for the purposes of this subsection, except as provided in subsection (3).~~

~~(3) If the funds appropriated in subsection (2) are not needed for the purpose specified in subsection (2), the department of administration may transfer up to $2.2 million of the remainder to compensate state agencies for any difference in the amount appropriated from the general fund for workers' compensation premiums and the actual amount of workers' compensation premiums funded from the general fund. The methodology for determining general fund appropriations for workers' compensation and actual general fund workers' compensation premium costs must be based on an agreement between the director of the office of budget and program planning and the legislative fiscal analyst.~~

~~(4) (a) The approving authority, as defined in 17-7-102, shall review and may approve the transfer under subsection (3).~~

~~(b) The legislative finance committee shall review the proposed transfer prior to the distribution of funds under subsection (3).~~

~~**Section 16. Codification instruction.** [Sections 13 and 14] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 13 and 14].~~

Section 17. Coordination instruction. (1) If House Bill No. 42 is passed and approved in a form that contains a fund transfer from the coal bed methane protection account provided for in 76-15-904 to the state treasury, then the fund transfer in [section 1(3)] is reduced by the amount specified in House Bill No. 42. For the purpose of this section, the fund transfer in [section 1(3)] may not be decreased below $0.

(2) If Senate Bill No. 424 and [this act] are both passed and approved, then Senate Bill No. 424 is void.

(3) If House Bill No. 611 is not passed and approved, then [section 4 of this act], amending 15-35-108, is void.

Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

~~(2) [Section 14(2)] is effective July 1, 2011, and applies to new or renewal policies effective July 1, 2011.~~

Section 20. Termination. (1) [Sections 2, 6, and 7] terminate June 30, 2013.

~~(2) [Section 14] terminates June 30, 2023.~~

Approved May 4, 2011

Note: The striking of languange in the title and the striking of sections 5, 13 through 16, 19(2), and 20(2) was done by Governor's line item veto dated May 4, 2011.

CHAPTER NO. 313

[HB 15]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO PUBLIC SCHOOL FACILITY PROJECTS THROUGH THE QUALITY SCHOOLS FACILITY GRANT PROGRAM; AUTHORIZING GRANTS FROM THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT IN THE STATE SPECIAL REVENUE FUND; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PLANNING GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from school facility and technology account — grants for school facility projects. (1) There is appropriated $11,069,265 to the department of commerce for the biennium beginning July 1, 2011, from the school facility and technology account provided for in 20-9-516 in the state special revenue fund to be used to finance grants authorized by this section.

(2) The funds appropriated in subsection (1) must be used by the department to make grants to the public school districts listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in 90-6-812 and described in the quality schools facility grant program 2013 biennium report to the 62nd legislature. The legislature, pursuant to 90-6-809 and 90-6-810, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in subsection (5) until the funds appropriated in subsection (1) are expended.

(3) The following applicants and projects are authorized for grants and listed in the order of their priority:

Applicant/Project	Grant Amount
1. Big Sandy/Lighting and Sensors	$124,340
2. Sweet Grass Co. HS/HVAC Remodel	$207,500
3. Somers/Roof Replacement	$418,142
4. Box Elder/Elementary School Addition	$799,590
5. Winnett/Finish Shop Building and Purchase Equipment	$314,107
6. White Sulphur Springs/Geothermal Heating System	$350,000
7. Helena ELE/ADA Improvement	$1,429,796
8. Gardiner/Energy Efficiency Upgrades	$43,694
9. Centerville/Boiler Replacement	$148,534
10. Shelby ELE/Wall Repairs	$146,904
11. Fair-Mont-Egan/Classroom Addition	$379,110
12. Livingston/Roof Replacement	$709,336
13. Corvallis/New Vocational Facility	$901,318
14. North Star/Fire Alarm System	$123,386
15. Choteau/Food Service Facility Repairs	$344,400
16. Miles City/Upgrade Temperature Controls	$442,841

17. Shelby HS/Lighting Retrofit	$102,895
18. Rocky Boy/Replace Emergency Generator	$72,650
19. Whitefish/HS Campus Redevelopment (Phase I)	$658,019
20. Colstrip/Upgrade Temperature Controls	$329,153
21. Whitehall/Roof Replacement	$534,232
22. Stanford/Boiler Replacement	$220,500
23. Grass Range/Door and Breezeway Upgrades	$38,315
24. Superior/Classroom Expansion	$521,162
25. Geraldine/Energy Efficiency Upgrades	$106,900
26. Bozeman HS/Lighting Retrofit	$109,087
27. Frazer/Boiler Replacement	$243,086
28. Libby/Boiler Replacement	$391,470
29. Hamilton/Boiler & Heat System Replacement	$751,000
30. Bozeman ELE/Lighting Retrofit	$107,798

(4) This section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the school facility and technology account state special revenue funds during the 2013 biennium pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in 90-6-812 and on the availability of funds.

(5) Funding for projects in subsection (3) must be provided only so long as there are sufficient funds available from the school facility and technology account in the state special revenue fund. Funding for these projects must be made available in the order that the grant recipients satisfy the conditions described in 90-6-812. Once all funds appropriated in subsection (1) for the biennium are totally committed to projects that have satisfied the conditions described in 90-6-812, the obligation to any remaining projects ceases.

(6) Grant recipients must complete the projects described in subsection (3) by June 30, 2013, or the grant contract must be terminated.

Section 2. Appropriations from school facility and technology account — emergency grants. There is appropriated $100,000 to the department of commerce for the biennium beginning July 1, 2011, from the school facility and technology account in the state special revenue fund for the purpose of providing emergency grants to public school districts for a school facility project that is necessitated by an emergency, as defined in 90-6-803.

Section 3. Appropriations from school facility and technology account — planning grants. There is appropriated $900,000 to the department of commerce for the biennium beginning July 1, 2011, from the school facility and technology account in the state special revenue fund for the purpose of providing matching planning grants to public school districts for the planning of school facility projects, as defined in 90-6-803.

Section 4. Approval of grants — completion of biennial appropriation. (1) The legislature, pursuant to 90-6-809 and 90-6-810, authorizes grants for the projects identified in [sections 1 through 3].

(2) The authorization of these grants completes a biennial appropriation from the school facility and technology state special revenue account provided for in 20-9-516(1).

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved May 5, 2011

CHAPTER NO. 314

[HB 29]

AN ACT INCLUDING MILITARY SERVICE OVERSEAS AS AN EXTRAORDINARY EVENT TO BE CONSIDERED FOR UNDERWRITING OR RATING EXCEPTIONS IN REGARD TO CREDIT REPORTS; AMENDING SECTION 33-18-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-605, MCA, is amended to read:

"33-18-605. Use of credit information. (1) An insurer authorized to do business in this state that uses credit information to underwrite or rate risks may not:

(a) use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

(b) deny, cancel, or not renew a policy of personal insurance on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (1)(a);

(c) base an insured's renewal rates for personal insurance upon credit information without consideration of any other applicable factor independent of credit information;

(d) take an adverse action against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information;

(e) consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(i) treats the consumer as otherwise approved by the commissioner if the insurer presents information that the absence or inability relates to the risk for the insurer;

(ii) treats the consumer as if the consumer had neutral credit information, as defined by the insurer; or

(iii) excludes the use of credit information as a factor and uses only other underwriting criteria;

(f) take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first written or renewal is issued;

(g) use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the

insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection (1)(g):

(i) at annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(ii) the insurer has the discretion to obtain current credit information upon any renewal before the 36 months provided for in subsection (1)(g), if consistent with its underwriting guidelines;

(iii) an insurer may but does not have to obtain current credit information for an insured, despite the requirements of subsection (1)(g)(i), if one of the following applies:

(A) the insurer is treating the consumer as otherwise approved by the commissioner;

(B) the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers;

(C) credit was not used for underwriting or rating the insured when the policy was initially written;

(D) the insurer reevaluates the insured beginning not later than 36 months after inception and at similar succeeding times based upon other underwriting or rating factors, excluding credit information.

(h) use a credit score that treats any of the following as a negative factor for the purpose of underwriting or rating a policy of personal insurance:

(i) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information;

(ii) inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(iii) collection accounts with a medical industry code, if so identified on the consumer's credit report;

(iv) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered;

(v) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered;

(vi) the number of credit inquiries;

(vii) the consumer's use of a particular type of credit card, charge card, or debit card or the number of credit cards obtained by a consumer;

(viii) a loan if information from the credit report makes it evident that the loan is for the purchase of an automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the total number of loans, or both.

(ix) the consumer's total available line of credit or total debt. However, an insurer may consider:

(A) the consumer's bill payment history on the debt; or

(B) the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.

(2) (a) An insurer shall, on written request from an applicant or an insured, provide reasonable underwriting or rating exceptions for a consumer whose credit report has been directly affected by an extraordinary event.

(b) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to consider repeated extraordinary events or extraordinary events the insurer reconsidered previously.

(c) An insurer may also consider granting an exception to a consumer for an extraordinary event not listed in this section.

(d) An insurer may not be considered to be out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection (2).

(e) As used in this subsection (2), "extraordinary event" means:

(i) expenses related to a catastrophic injury or illness;

(ii) temporary loss of employment;

(iii) death of an immediate family member; ~~or~~

(iv) theft of identity pursuant to 45-6-332*; or*

(v) military service overseas."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2011

CHAPTER NO. 315

[HB 43]

AN ACT CLARIFYING EMPLOYER RIGHTS RELATED TO WORKERS' COMPENSATION, DRUG TESTING, AND DISCIPLINARY ACTION INVOLVING AN EMPLOYEE'S MEDICAL USE OF MARIJUANA; EXPANDING THE TYPES OF EMPLOYEES COVERED BY THE WORKFORCE DRUG AND ALCOHOL TESTING ACT; CREATING EMPLOYMENT-RELATED EXCEPTIONS TO THE PROTECTIONS OF THE MEDICAL MARIJUANA ACT; PROVIDING DEFINITIONS; AMENDING SECTIONS 39-2-206, 39-2-210, 39-2-313, 39-71-407, 50-46-201, AND 50-46-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, employers who are concerned about public and workplace safety have increasingly faced issues associated with employees and potential employees who are approved for or associated with the medical use of marijuana; and

WHEREAS, clarifications are necessary to affirm employers' rights in the hiring and termination process, drug testing, and other issues related to the medical use of marijuana in an employee's course and scope of employment.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-2-206, MCA, is amended to read:

"39-2-206. Definitions. As used in 39-2-205 through 39-2-211, the following definitions apply:

(1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.

(4) *(a)* "Employee" means an individual engaged in the performance, supervision, or management of work in a*:*

(i) hazardous work environment~~,~~*;*

(ii) security position~~,~~*; or*

(iii) position*:*

(A) affecting public safety~~,~~ *or public health;*

(B) in which driving a motor vehicle is necessary for any part of the individual's work duties; or

~~or~~

(C) involving a fiduciary ~~position~~ *responsibility* for an employer.

(b) ~~and~~ *The term* does not include an independent contractor~~. The term includes~~ *or* an elected official *who serves on the governing body of a local government*.

(5) *(a)* "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(b) The term includes the governing body of a local government.

(6) "Governing body" means the legislative authority of a local government.

~~(6)~~*(7)* "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

(8) "Local government" means a city, town, county, or consolidated city-county.

~~(7)~~*(9)* "Medical review officer" means a licensed physician trained in the field of substance abuse.

~~(8)~~*(10)* "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.

~~(9)~~*(11)* "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.

~~(10)~~*(12)* "Sample" means a urine specimen, a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or alcohol."

Section 2. Section 39-2-210, MCA, is amended to read:

"39-2-210. Limitation on adverse action. ~~No~~ *Except as provided in 50-46-205, no* adverse action, including followup testing, may be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed."

Section 3. Section 39-2-313, MCA, is amended to read:

"39-2-313. Discrimination prohibited for use of lawful product during nonworking hours — exceptions. (1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product*, including the medical use of marijuana as defined in 50-46-102,* that:

(i) affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees; or

(ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or

(c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public.

(4) An employer does not violate this section if the employer takes action based on the belief that the employer's actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

(5) An employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees' use of a product if:

(a) differential rates assessed against employees reflect actuarially justified differences in providing employee benefits;

(b) the employer provides an employee with written notice delineating the differential rates used by the employer's insurance carriers; and

(c) the distinctions in the type or price of coverage are not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action."

Section 4. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers — limitations. (1) For workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan

No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(4) ~~An~~ *Except as provided in subsection (5), an* employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. ~~However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.~~

(5) (a) An employee who has received written certification, as defined in 50-46-102, from a physician for the medical use of marijuana and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (5)(b) through (5)(d).

(b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's medical use of marijuana, as defined in 50-46-102, is the major contributing cause of the injury or occupational disease.

(c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the medical use of marijuana, as defined in 50-46-102.

(d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's medical use of marijuana, as defined in 50-46-102. An insurer remains liable for those benefits that the worker would qualify for absent the worker's medical use of marijuana.

(6) The provisions of subsection (4) do not apply if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (6) does not apply to medical marijuana, which is not a prescribed drug.

~~(5)~~*(7)* If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently

filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

~~(6)~~*(8)* If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

~~(7)~~*(9)* An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

~~(8)~~*(10)* For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 with an occupational disease that arises out of or is contracted in the course and scope of employment.

~~(9)~~*(11)* Occupational diseases are considered to arise out of employment or be contracted in the course and scope of employment if:

(a) the occupational disease is established by objective medical findings; and

(b) the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.

~~(10)~~*(12)* When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

~~(11)~~*(13)* When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease was first diagnosed by a treating physician or medical panel; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease.

~~(12)~~*(14)* In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

~~(13)~~*(15)* As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 5. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana — legal protections — limits on amount — presumption of medical use. (1) ~~A~~ *Except as provided in 50-46-205, a* person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be

denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 6. Section 50-46-205, MCA, is amended to read:

"50-46-205. Limitations of Medical Marijuana Act. (1) This chapter does not permit:

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana;

(b) the use of marijuana by a caregiver; or

(c) the smoking of marijuana by a qualifying patient:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Nothing in this chapter may be construed to require:

(a) a government medical assistance program ~~or~~*, a* ~~private health insurer~~ *group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116* to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate ~~the medical use of marijuana in any workplace~~ *the medical use of marijuana*.

(3) Nothing in this chapter may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the medical use of marijuana; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

~~(3)~~*(4)* Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

Section 7. Coordination instructions. (1) If both House Bill No. 161 and [this act] are passed and approved, then [sections 2 through 6 of this act] are void.

(2) If House Bill No. 175 is approved by the electorate in 2012, then [sections 2 through 6 of this act] are void on [the effective date of House Bill No. 175].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2011

CHAPTER NO. 316

[HB 47]

AN ACT AUTHORIZING FISHING WITHOUT A LICENSE ON A SPECIFIC WEEKEND EACH YEAR; AMENDING SECTION 87-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-103, MCA, is amended to read:

"87-2-103. License required — *exceptions.* (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, it is unlawful for a person to:

(a) hunt or trap or attempt to hunt or trap any game animal, any game bird, or any fur-bearing animal or to fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds, except as provided by law or as provided by the department; or

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or to fish for any fish, except at the places and during the periods and in the manner defined by law or as defined by the department; or

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of

fur-bearing animals without first having obtained a proper and valid license or permit from the department to do so; or

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident as defined in 87-2-102.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.

(3) Each year on Father's Day weekend, a person may fish for any fish within this state without obtaining a fishing license required in subsection (1)(c) as long as the person does so in accordance with any other law or regulation of the department in effect on that weekend."

Section 2. Coordination instruction. If both Senate Bill No. 124 and [this act] are passed and approved, then [sections 1 and 4 of this act] are void and [this act] must read as follows:

"NEW SECTION. **Section 1. Free fishing weekend.** Each year on Father's Day weekend, a person may fish for any fish within this state without obtaining a fishing license pursuant to this part as long as the person does so in accordance with any other law or regulation of the department in effect on that weekend.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 3, and the provisions of Title 87, chapter 2, part 3, apply to [section 1].

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval."

Section 3. Coordination instruction. If both Senate Bill No. 124 and [this act] are passed and approved, then [section 22] of Senate Bill No. 124 must read as follows:

"NEW SECTION. **Section 22. Hunting, fishing, or trapping without a license.** (1) Except as provided in [section 1 of House Bill No. 47] and subsection (2) of this section, a person may not:

(a) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts of those animals or birds except as provided by law or as provided by the department;

(b) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish, except at the places and during the periods and in the manner established by law or as prescribed by the department;

(c) hunt or trap or attempt to hunt or trap any game animal, game bird, or fur-bearing animal or fish for any fish within this state or possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts of fur-bearing animals without first having obtained a proper and valid license or permit from the department to do so;

(d) trap or attempt to trap predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident; or

(e) hunt migratory game birds without first having obtained a valid migratory game bird license from the department if the person is 16 years of age or older.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to kill or attempt to kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. However, the person must meet the qualifications for a license in the person's state of residence.

(3) A person convicted of a violation of this section shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(4) A person convicted of hunting without a license may be subject to the additional penalties provided in [sections 63 and 64].

(5) A violation of this section may also result in an order to pay restitution pursuant to [sections 67 through 69]."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2011

CHAPTER NO. 317

[HB 90]

AN ACT GENERALLY REVISING MONTANA MORTGAGE LAWS; CHANGING THE NAME OF THE MONTANA MORTGAGE BROKER, MORTGAGE LENDER, AND MORTGAGE LOAN ORIGINATOR LICENSING ACT TO THE MONTANA MORTGAGE ACT; REVISING DEFINITIONS; DEFINING AND PROVIDING FOR THE LICENSING AND REGULATION OF MORTGAGE SERVICERS; REVISING THE MONTANA MORTGAGE ACT TO CONFORM TO FEDERAL LAW; REVISING APPLICATION AND LICENSING REQUIREMENTS; REDUCING THE REQUIRED HOURS FOR CONTINUING EDUCATION; REVISING RECORDKEEPING AND REPORTING REQUIREMENTS; REVISING BONDING REQUIREMENTS; REVISING DISCLOSURE REQUIREMENTS; PROHIBITING CERTAIN ACTS BY MORTGAGE LENDERS AND MORTGAGE SERVICERS; EXPANDING THE DEPARTMENT OF ADMINISTRATION'S RULEMAKING AUTHORITY; AMENDING SECTIONS 31-1-202, 32-5-102, 32-7-103, 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-106, 32-9-107, 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-118, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-128, 32-9-129, 32-9-130, 32-9-133, 32-9-145, 32-9-148, 32-9-150, 32-9-151, AND 32-9-160, MCA; AND REPEALING SECTIONS 32-9-114 AND 32-9-127, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-202, MCA, is amended to read:

"31-1-202. Definitions — *scope*. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services that are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money, ~~or~~ things in action, *or dwellings as defined in 15 U.S.C. 1602(v).* ~~The term includes goods that, at the time of the sale or subsequently, are to be so affixed to realty as to become a part of the realty, whether or not severable from it.~~

(e) "Holder" means:

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

(g) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway.

(ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

(iii) The term does not include a dwelling as defined in 15 U.S.C. 1602(v).

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed

the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services that are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's downpayment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions that may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts that are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance and benefits, and the amounts of the official fees and the finance charge.

(2) (a) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) This part applies to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

(c) This part does not apply to a transaction governed by Title 32, chapter 9, part 1."

Section 2. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate amount of the required minimum periodic payments would not fully amortize the outstanding balance by the specific date or at the end of the loan term.

(2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are not primarily secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) deferred deposit loans provided for in Title 31, chapter 1, part 7; ~~or~~

(ii) title loans provided for in Title 31, chapter 1, part 8*; or*

(iii) residential mortgage loans as defined in 32-9-103.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.

(5) "License" means a license provided for by this chapter.

(6) "Licensee" means the person holding a license.

(7) "Person" means individuals, partnerships, associations, corporations, and all legal entities."

Section 3. Section 32-7-103, MCA, is amended to read:

"32-7-103. Exemptions. (1) The provisions of this part do not apply to the following:

(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state

relating to insurance companies and the person is regulated by the commissioner of insurance;

(d) a person licensed pursuant to Title 32, chapter 9, part 1, as a mortgage broker, mortgage lender, or mortgage servicer;

~~(d)~~*(e)* a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution shall supply a copy of the most recently prepared audit or examination to the director upon the director's request.

~~(e)~~*(f)* except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if the broker is performing an act:

(i) in the course of or incidental to a single real estate transaction; and

(ii) for which a real estate license is required; and

~~(f)~~*(g)* any person furnishing escrow services under the order of a court.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part."

Section 4. Section 32-9-101, MCA, is amended to read:

"32-9-101. Short title and purpose. (1) This part may be cited as the "Montana Mortgage ~~Broker, Mortgage Lender, and Mortgage Loan Originator Licensing~~ Act".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including mortgage brokers, mortgage lenders, *mortgage servicers,* and mortgage loan originators, to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.

(3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance of statewide participation in the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 5. Section 32-9-102, MCA, is amended to read:

"32-9-102. License requirement — registration. (1) Unless exempt under 32-9-104, a person may not act as a mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator with respect to any residential ~~real estate~~ *mortgage loan* located in Montana unless licensed under the provisions of this part.

(2) ~~Any~~ *A* person acting as a mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator under this part is required to be licensed ~~and~~ *through,* registered with*,* and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry ~~by the date set forth in 32-9-105(4)~~. (See compiler's comment regarding contingent suspension.)"

Section 6. Section 32-9-103, MCA, is amended to read:

"32-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan and communication with a consumer to obtain

information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry.

(3) "Approved test provider" means any test provider approved by the nationwide mortgage licensing system and registry.

(4) "Bona fide third party" means a person that provides services relative to *the origination of a* residential mortgage loan ~~transactions~~. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(5) "Borrower" means a person seeking a residential mortgage loan *or an obligor on a residential mortgage loan*.

(6) "Branch office" means a location *at which a licensee conducts business* other than a licensee's principal place of business. *The location is considered a branch office if:*

(a) the address of the location appears on business cards, stationery, or advertising used by the entity;

(b) the entity's name or advertising suggests that mortgages are made at the location;

(c) the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or

(d) the location is controlled directly or indirectly by the entity.

(7) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer;

(ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(iii) in the case of a limited liability company, is a managing member; or

(iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.

(8) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

(10) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

(11) "Dwelling" has the meaning provided in 15 U.S.C. 1602(v).

~~(11)~~*(12)* "Entity" means a business organization, including a sole proprietorship.

~~(12)~~*(13)* "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender *or*

mortgage servicer and is maintained solely for the holding and payment of escrow funds.

~~(13)~~*(14)* "Escrow funds" means funds entrusted to a mortgage lender *or mortgage servicer* by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

~~(14)~~*(15)* "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

~~(15)~~*(16)* "Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.

~~(16)~~*(17)* "Individual" means a natural person.

~~(17)~~*(18)* "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

~~(18)~~*(19)* "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

~~(19)~~*(20)* "Loan processor or underwriter" means an individual who performs administrative or clerical tasks as an employee, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

~~(20)~~*(21)* "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(21)~~*(22)* (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection ~~(21)~~ *(22)*, attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

~~(22)~~*(23)* "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

~~(23)~~*(24)* (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) takes a residential mortgage loan application; or

(ii) offers or negotiates terms of a residential mortgage loan.

(b) The term does not include an individual:

(i) engaged solely as a loan processor or underwriter, except as provided in 32-9-129; or

(ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).

~~(24) "Mortgage servicer loss mitigation specialist" means a person who on behalf of the person making the residential mortgage loan works with a borrower who is in default or in a foreseeable likelihood of a default to modify or refinance either temporarily or permanently the borrower's obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.~~

(25) "Mortgage servicer" means an entity that:

(a) engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract; or

(b) meets the definition of "servicer" in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans.

~~(25)~~*(26)* "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of state-licensed mortgage brokers, state-licensed mortgage lenders, *state-licensed mortgage servicers,* state-licensed mortgage loan originators, and registered mortgage loan originators.

~~(26)~~*(27)* "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

~~(27)~~*(28)* "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

~~(28)~~*(29)* "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction;

(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law; or

(e) offering to engage in any activity or act in any capacity described in subsections ~~(28)(a)~~ *(29)(a)* through ~~(28)(d)~~ *(29)(d).*

~~(29)~~*(30)* "Registered mortgage loan originator" means an individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the farm credit administration; and

(b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

~~(30)~~*(31)* "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling~~, as defined in section~~

~~103(v) of the Truth in Lending Act, 15 U.S.C. 1602(v),~~ or on residential real estate located in Montana.

~~(31)~~*(32)* "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

~~(32)~~*(33)* "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees.

(34) "Trust account funds" means money entrusted to a mortgage lender or mortgage broker during the origination of a mortgage loan for the payment of services provided by a bona fide third party, which does not include the services of a mortgage broker, mortgage lender, or mortgage loan originator. The term includes appraisal fees, credit report fees, and other fees required for the mortgage loan origination.

~~(33)~~*(35)* "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

~~(34)~~*(36)* "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 7. Section 32-9-104, MCA, is amended to read:

"32-9-104. Exemptions — proof of exemption. (1) The provisions of this part do not apply to:

(a) an entity that is an agency of the federal, state, or municipal government;

(b) an entity described in 32-9-103~~(29)(a)(i)~~*(30)(a)(i)* through ~~(29)(a)(iii)~~ *(30)(a)(iii)*;

(c) a registered mortgage loan originator when acting for an entity described in 32-9-103~~(29)(a)(i)~~*(30)(a)(i)* through ~~(29)(a)(iii)~~ *(30)(a)(iii)*;

(d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;

(e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;

(f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;

(g) an entity engaged solely in commercial real estate lending;

(h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;

(i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;

(j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;

(k) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;

(l) a ~~licensed~~ *Montana-licensed* attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or

(m) a ~~licensed~~ *Montana-licensed* certified public accountant or a ~~licensed~~ *Montana-licensed* public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.

~~(2) The department or the secretary of housing and urban development may exempt from this part mortgage servicer loss mitigation specialists if the department or the secretary of housing and urban development determines by guideline, interpretation, or rule that an exemption of a mortgage servicer loss mitigation specialist is not in violation of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289.~~

~~(3)~~*(2)* The burden of proving an exemption under this section is on the person claiming the exemption. *A person seeking an exemption under subsection (1)(a), (1)(b), (1)(c), (1)(f), (1)(h), (1)(j), (1)(l), or (1)(m) is required to obtain a written exemption from the department before the exemption applies.* The department shall create a form for requesting an exemption.

(3) A person who is exempt from licensure under subsection (1) may register on the nationwide mortgage licensing system as an exempt registrant for purposes of sponsoring a mortgage loan originator and for purposes of satisfying the mortgage loan originator bonding requirements. (See compiler's comment regarding contingent suspension.)"

Section 8. Types of licenses. (1) The four types of licenses under this part are mortgage broker licenses, mortgage lender licenses, mortgage servicer licenses, and mortgage loan originator licenses.

(2) A mortgage broker license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage loan originator.

(3) A licensee-owned mortgage broker entity license may be issued to an entity that meets the requirements of subsection (2) and is owned by a Montana-licensed mortgage loan originator.

(4) A mortgage lender license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage loan originator.

(5) A mortgage servicer license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-117, and 32-9-123.

(6) A mortgage loan originator license may be issued to an individual who meets the requirements of 32-9-107, 32-9-109, 32-9-110, 32-9-112, 32-9-116, and 32-9-117 and is sponsored by a Montana-licensed mortgage broker or mortgage lender.

(7) A Montana-licensed entity may have one or more branch offices if the entity meets the requirements of 32-9-122 and has paid the fee required under 32-9-117.

(8) Licenses under this part may not be assigned or transferred.

Section 9. Section 32-9-105, MCA, is amended to read:

"32-9-105. ~~Overall licensing requirements~~ *Nationwide mortgage licensing system and registry* for mortgage brokers, mortgage lenders, *mortgage servicers,* and mortgage loan originators. (1) The department ~~is authorized to~~ *may* participate in the nationwide mortgage licensing system and registry and shall require mortgage lenders, mortgage brokers, *mortgage servicers,* and mortgage loan originators to apply for state licensure on applications approved by the nationwide mortgage licensing system and registry ~~by the dates set forth in subsection (4)~~.

(2) The department may establish requirements *through rulemaking* as necessary to comply with the nationwide mortgage licensing system and registry, including *requirements*:

(a) *for* payment of nonrefundable fees to apply for, maintain, and renew licenses through the nationwide mortgage licensing system and registry;

(b) *for* renewal or reporting dates;

(c) *for* procedures ~~for amending~~ *to amend* or ~~surrendering~~ *to surrender* a license; and

(d) ~~requirements~~ pertaining to any other activity necessary for participation in the nationwide mortgage licensing system and registry.

(3) The state portion of the licensing fees collected by the nationwide mortgage licensing system and registry under this section must be deposited into the department's account in the state special revenue fund to be used for administering this part.

~~(4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the implementation date of subsection (1) is:~~

~~(a) April 1, 2010, for all new applicants applying after July 1, 2009;~~

~~(b) June 30, 2010, for all licensees with current licenses as of July 1, 2009; and~~

~~(c) for mortgage servicer loss mitigation specialists, if not exempt under 32-9-104(2), a date as set by the department by rule.~~

~~(5) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters.~~

(4) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters. (See compiler's comment regarding contingent suspension.)"

Section 10. Section 32-9-106, MCA, is amended to read:

"32-9-106. ~~Dual~~ *Simultaneous* licensure. An entity may be simultaneously licensed as a mortgage lender*, mortgage servicer,* and a mortgage broker ~~provided that~~ *if* the entity meets all requirements for licensure *for each license type* ~~as a mortgage lender and a mortgage broker~~. (See compiler's comment regarding contingent suspension.)"

Section 11. Section 32-9-107, MCA, is amended to read:

"32-9-107. Prelicensing education requirements for mortgage loan originators. (1) An individual seeking a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include *at least*:

(a) ~~at least~~ 3 hours of training on federal law and regulations;

(b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana.

~~(3) If allowed by the nationwide mortgage licensing system and registry, the department is authorized to certify to the nationwide mortgage licensing system and registry that continuing education hours that were previously approved by the department have been completed by a mortgage loan originator.~~ (See compiler's comment regarding contingent suspension.)"

Section 12. Section 32-9-112, MCA, is amended to read:

"32-9-112. Application for mortgage broker, mortgage lender, *mortgage servicer,* and mortgage loan originator license — *renewals.* (1) An applicant under this part shall apply for a state license ~~in~~ *or renewal of a license on* a form prescribed by the department that complies with the requirements of the nationwide mortgage licensing system and registry. Each form must contain content as set forth by the nationwide mortgage licensing system and registry and may be changed or updated by the department as necessary to comply with the nationwide mortgage licensing system and registry.

(2) The department may establish a relationship or contract with the nationwide mortgage licensing system and registry or another entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant *for a license or license renewal* shall furnish information to the nationwide mortgage licensing system and registry concerning the applicant's identity, including but not limited to:

(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check;

~~(b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check;~~ and

~~(e)~~*(b)* personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry and the department to obtain:

(i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

(4) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.

(5) To reduce the points of contact that the department may be required to maintain for purposes of subsection (3), the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the department.

(6) The department shall issue a license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under 32-9-120. (See compiler's comment regarding contingent suspension.)"

Section 13. Section 32-9-113, MCA, is amended to read:

"32-9-113. Application for ~~licensure~~ *license — renewal.* In order for an entity to be considered for *a* state ~~licensure~~ *license or license renewal*, each of the following is required to independently meet the requirements established in 32-9-120(1)(a) through ~~(1)(d)~~ *(1)(c) and (1)(g)*:

(1) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;

(2) control persons of the applicant if the control persons are individuals; and

(3) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity. (See compiler's comment regarding contingent suspension.)"

Section 14. Section 32-9-116, MCA, is amended to read:

"32-9-116. Employment of mortgage loan originator. (1) A mortgage loan originator may transact business ~~only~~ for ~~an~~ *only one* employing mortgage broker or one employing mortgage lender licensed in accordance with the provisions of this part. ~~Each original license issued to a mortgage loan originator must be provided to and maintained by the employing mortgage broker or employing mortgage lender at the employing licensee's main office. A copy of the mortgage loan originator's license must be displayed at the office where that mortgage loan originator principally transacts business.~~

(2) If the employment of a mortgage loan originator is terminated, the mortgage broker or the mortgage lender shall ~~return the mortgage loan originator's license to the department within 5 business days after the termination and~~ remove sponsorship of the mortgage loan originator on the nationwide mortgage licensing system and registry within 5 business days of the termination. *The mortgage loan originator's license must be placed in "Approved-Inactive" status until the license is sponsored by a mortgage broker or mortgage lender. If at the end of the next renewal period the license is not*

sponsored by a mortgage broker or mortgage lender, it must be automatically placed in "Terminated-Expired" status for failure to renew. ~~For a period of 6 months after the termination of employment, the mortgage loan originator may request the transfer of the license to another mortgage broker or mortgage lender by complying with the nationwide mortgage licensing system and registry procedures and paying a fee established by the department by rule.~~ The removal of sponsorship of the license of any mortgage loan originator ~~that is not transferred to another mortgage broker or mortgage lender terminates~~ *extinguishes* the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until nationwide mortgage licensing system and registry procedures have been followed to sponsor the license. ~~The license of any mortgage loan originator that has been removed from sponsorship and not transferred within 6 months of termination of employment must be canceled.~~ (See compiler's comment regarding contingent suspension.)"

Section 15. Section 32-9-117, MCA, is amended to read:

"32-9-117. Fees — license renewal — disposition of fees. (1) (a) ~~Except as provided in subsection (1)(b), an~~ *An* entity seeking licensure as a mortgage broker shall pay *through the nationwide mortgage licensing system and registry* an initial nonrefundable license application fee of $500 and an additional application fee of $250 for any branch ~~location~~ *office*. A mortgage loan originator shall pay *through the nationwide mortgage licensing system and registry* an initial nonrefundable license application fee of $400. An entity seeking licensure as a mortgage lender shall pay *through the nationwide mortgage licensing system and registry* an initial nonrefundable license application fee of $750 and an additional application fee of $250 for any branch ~~location~~ *office*. ~~An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.~~ *An entity seeking licensure as a mortgage servicer shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of $750 and an additional nonrefundable application fee of $250 for each branch office.*

(b) ~~An individual who is seeking licensure as a mortgage loan originator and who is the owner of an entity that is seeking licensure as a mortgage broker~~ *A mortgage broker entity owned by a Montana-licensed mortgage loan originator* shall pay ~~a single initial nonrefundable~~ *through the nationwide mortgage licensing system and registry an initial nonrefundable* license application fee of ~~$500~~ *$100*.

(2) The license of a mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator is valid for *up to* a 1-year period *and expires on December 31*. A state licensee shall submit a renewal application and pay to the nationwide mortgage licensing system and registry a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. ~~The department shall establish a single renewal fee for individuals and entities described in subsection (1)(b). An individual described in subsection (1)(b) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager.~~ The fees set by the department must be commensurate with the costs of the program. ~~Failure to submit~~ *If the* required information or fees *are not submitted* within the time prescribed, ~~means~~ the license *will* automatically ~~expires~~ *be placed in "Terminated-Expired" status*. The department may adopt procedures for reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system and registry.

(3) An application for renewal *of a mortgage loan originator license* must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part and that the licensee has paid all fees for renewal of the license.

(4) The state portion of the fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.

(5) An applicant for a mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator license renewal shall apply for state licensure on an application form approved by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 16. Section 32-9-118, MCA, is amended to read:

"32-9-118. Continuing education requirements for mortgage loan originators. (1) All mortgage loan originators shall complete and submit to the nationwide mortgage licensing system and registry evidence of at least ~~12~~ *8* hours of continuing education every year at the time they submit their license renewal applications. The ~~12~~ *8* hours of continuing education must be obtained in ~~an~~ approved education ~~course~~ *courses*.

(2) The ~~12~~ *8* hours of education must include at least:

(a) 3 hours of training on federal laws and regulations;

(b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and

(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(3) A person who has successfully completed the education requirements that comply with the requirements of ~~subsection~~ *subsections* (1) *and (2)* and that are approved by the nationwide mortgage licensing system and registry for any other state must be given credit toward completion of continuing education requirements in Montana.

(4) Except as provided in subsection (6), a licensed mortgage loan originator may receive credit for a continuing education course only in the year in which the course is taken and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(5) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

~~(4)~~*(6)* A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license. *The continuing education requirements of this subsection are not subject to the provisions of subsection (4).* (See compiler's comment regarding contingent suspension.)"

Section 17. Section 32-9-120, MCA, is amended to read:

"32-9-120. Denial of mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator license application or license renewal. (1) The department may not issue or renew any mortgage broker,

mortgage lender, *mortgage servicer,* or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator license or ~~their~~ *an* equivalent *license* revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.

(b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon of a conviction is not a conviction for the purposes of this subsection (1)(b).

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;

(d) the applicant has not ~~met~~ *provided* the surety bond ~~or net worth requirement~~ as required pursuant to 32-9-123;

(e) the applicant has not completed the prelicensing education requirement described in 32-9-107;

(f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;

(g) the applicant made a material misstatement of fact or material omission of fact in the application.

(2) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c). (See compiler's comment regarding contingent suspension.)"

Section 18. Section 32-9-121, MCA, is amended to read:

"32-9-121. Records maintenance — advertising requirement. (1) Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and trust account or escrow account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The materials must be maintained in accordance with generally accepted accounting principles and good business practices. Each office location must have at least one phone line. Whenever a licensee's usual business location is outside of this state the licensee shall, at its election, either maintain its books and records at a location in this state or reimburse the department for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under this part.

(2) A mortgage broker*,* ~~or~~ mortgage lender*, or mortgage servicer* shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker*,* ~~or~~ mortgage lender*, or mortgage servicer* shall maintain trust account or escrow account records for a minimum of 5 years.

(3) An entity that ceases operation as a licensee under the provisions of this part shall:

(a) 30 days prior to the discontinuance of business, notify the department of the physical location where required records will be preserved; and

(b) designate a custodian of records and notify the department of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve records required under this part and allow the department access for examination and investigation purposes upon request of the department.

(4) The department shall adopt rules to control the maintenance, storage, transfer, and destruction of records after a licensee ceases operation.

~~(3)~~*(5)* (a) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:

(i) a name and ~~license number~~ *unique identifier* for each mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator advertising as an individual; or

(ii) the name and ~~license number~~ *unique identifier* only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers, mortgage lenders, *mortgage servicers,* or mortgage loan originators also listed.

(b) For the purposes of this subsection ~~(3)~~ *(5)*, advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's, a mortgage lender's, *a mortgage servicer's,* or a mortgage loan originator's ~~license number~~ *unique identifier* but is not required to list the entity's ~~license number~~ *unique identifier* if the entity's name is listed. (See compiler's comment regarding contingent suspension.)"

Section 19. Section 32-9-122, MCA, is amended to read:

"32-9-122. Designated manager and branch *office* license requirements. (1) A mortgage broker*,* ~~or~~ mortgage lender*, or mortgage servicer* entity shall apply for a license for a main office and for every branch office through the nationwide mortgage licensing system and registry and maintain a unique identifier.

(2) A mortgage broker entity shall designate to the nationwide mortgage licensing system and registry an individual who is licensed by this state as a mortgage loan originator to serve as the designated manager of the main office and a separate designated manager to serve at each branch ~~location~~ *office*.

(3) A mortgage lender entity shall designate to the nationwide mortgage licensing system and registry for each office that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated manager of the main office and shall designate a separate designated manager to serve each branch ~~location~~ *office that originates a residential mortgage loan*.

(4) A designated manager must have 3 years of experience as either a mortgage loan originator or a registered mortgage loan originator.

(5) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

(6) A mortgage broker or mortgage lender entity is responsible for the conduct of a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage

broker or mortgage lender entity, including for violations of federal laws *and regulations* that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.

(7) A designated manager is responsible for conduct that violates federal laws *and regulations* that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. The designated manager's responsibility includes conduct by the designated manager and each mortgage loan originator employed by the entity while the designated manager is employed at the location that the designated manager manages.

(8) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage ~~loan originator~~ *lender* shall designate another individual licensed as a mortgage ~~broker~~ *loan originator* as designated manager and shall submit information to the nationwide mortgage licensing system and registry establishing that the subsequent designated manager is in compliance with the provisions of this part.

(9) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall ~~return the designated manager's license to the department within 5 business days of the termination and~~ remove the sponsorship of the designated manager on the nationwide mortgage licensing system and registry within 5 business days of the termination.

(10) A mortgage servicer is responsible for the acts and omissions of its employees, agents, and independent contractors acting in the course and scope of their employment, agency, or contract. (See compiler's comment regarding contingent suspension.)"

Section 20. Section 32-9-123, MCA, is amended to read:

"32-9-123. Surety bond ~~or net worth~~ requirement — notice of legal action. (1) (a) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of ~~or exclusive agent for~~ a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond.

(b) *The bond must run to the state of Montana as obligee and must run first to the benefit of the borrower and then to the benefit of the state and any person who suffers loss by reason of the obligor's or its loan originator's violation of any provision of this part or rules adopted under this part.* The department shall use the proceeds of the surety bonds to reimburse borrowers*, the department,* or bona fide third parties who successfully demonstrate a financial loss because of an act of a mortgage broker, mortgage lender, or mortgage loan originator that violates ~~the provisions~~ *any provision* of this part.

(2) (a) ~~A~~ *An entity licensed as a* mortgage broker*,* ~~or~~ mortgage lender*, and mortgage servicer* is required to maintain one surety bond for each entity license.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential mortgage loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

(i) $25,000 for a combined annual loan production that does not exceed $50 million a year;

(ii) $50,000 for annual loan production of $50 million but not exceeding $100 million a year; or

(iii) $100,000 for annual loan production of more than $100 million a year.

(c) The amount of the required surety bond for a mortgage servicer is $100,000.

~~(3) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement.~~

~~(b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated.~~

~~(c) The department shall adopt rules with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this part.~~

~~(4) Evidence that a mortgage broker is approved by the department of housing and urban development to originate loans insured by the federal housing administration must be considered as satisfying the net worth requirement provided that the actual net worth determined in the department of housing and urban development's approval is equivalent to the bond amount set forth for the corresponding dollar amount range set forth in subsections (2)(b)(i) through (2)(b)(iii).~~

~~(5)~~*(3)* A mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator shall give notice to the department by certified mail within 15 days of the mortgage ~~broker's~~ *broker*, mortgage ~~lender's~~ *lender*, *mortgage servicer,* or mortgage loan ~~originator's~~ *originator* obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, *a* mortgage lender, *a mortgage servicer, a mortgage loan originator, or* anyone having an ownership interest in a mortgage broker entity*,* ~~or~~ mortgage lender entity, or ~~a mortgage loan originator~~ *mortgage servicer entity*. In the case of a legal action, the notice must include a copy of the criminal or civil judgment.

(4) (a) An obligor shall give written notice to the department of any action that may be brought against it by any creditor or borrower when the action:

(i) is brought under this part;

(ii) involves a claim against the bond filed with the department for the purposes of compliance with this section; or

(iii) involves a claim for damages in excess of $20,000 for a mortgage broker or mortgage loan originator or $200,000 for a lender or servicer.

(b) An obligor shall give written notice to the department of any judgment that may be entered against it by any creditor or any borrower or prospective borrower.

(c) The written notice must provide details sufficient to identify the action or judgment and must be submitted within 30 days after the commencement of any action or within 30 days after the entry of any judgment.

(5) A corporate surety shall, within 10 days after it pays any claim or judgment to any claimant, give written notice to the department of the payment with details sufficient to identify the claimant and the claim or judgment paid. Whenever the principal sum of a required bond is reduced by one or more recoveries or payments on the bond, the obligor shall furnish a new or additional bond so that the total or aggregate principal sum of the bond or bonds equals the sum required under this section or the obligor shall furnish an endorsement duly

executed by the corporate surety reinstating the bond to the required principal sum.

(6) A bond filed with the department for the purpose of compliance with this section may not be canceled by the obligor or the corporate surety except upon written notice to the department. The cancellation may not take effect until 30 days after receipt by the department of the notice. The cancellation is effective only with respect to any occurrence after the effective date of the cancellation. (See compiler's comment regarding contingent suspension.)"

Section 21. Reports. (1) A licensee shall file a written report with the department within 30 business days of any material change to the information provided in a licensee's application.

(2) A licensee shall file a written report with the department within 1 business day after the licensee has reason to know of the occurrence of any of the following:

(a) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. 101, et seq., for bankruptcy or reorganization;

(b) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for the licensee's dissolution or reorganization, or the making of a general assignment for the benefit of the licensee's creditors;

(c) the licensee's decision to cease doing business for any reason;

(d) the commencement of a proceeding to revoke or suspend the licensee's license in a state in which the licensee engages in business or is licensed;

(e) the cancellation or other impairment of the licensee's or an exempt company's bond; or

(f) a felony conviction of the licensee, employee of a licensee, or control person of a licensee.

(3) A licensee shall file a written report with the department within 15 business days after the licensee has reason to know of the occurrence of any of the following:

(a) fraud, theft, or conversion by a borrower against the licensee;

(b) fraud, theft, or conversion by a licensee; or

(c) fraud, theft, or conversion by an employee or independent contractor of a licensee;

(d) violation of a provision of 32-9-124;

(e) the discharge of any employee or termination of an independent contractor for dishonest or fraudulent acts; or

(f) any administrative, civil, or criminal action initiated against the licensee or any of its control persons by any government entity.

(4) (a) In the absence of malice, fraud, or bad faith, a person may not be subjected to civil liability arising from the filing of a complaint with the department or furnishing of other information required by this section or required by the department under the authority granted in this section.

(b) In the absence of malice, fraud, or bad faith, a civil cause of action of any nature may not be brought against a person for any information:

(i) relating to suspected prohibited acts and furnished to or received from law enforcement officials, their agents, or employees or furnished to or received from other regulatory or licensing authorities;

(ii) furnished to or received from other persons subject to the provisions of this part; or

(iii) furnished in complaints filed with the department.

Section 22. Change of control. (1) Without the prior approval of the department, it is unlawful for an action to be taken that results in a change of control of an entity licensed under this part. Prior to a change of control of a licensed entity, a person seeking to acquire control shall apply for an amendment to the license or a new license as required by the nationwide mortgage licensing system and pay all applicable fees.

(2) The department shall approve or disapprove the application for an amendment or new license in accordance with the provisions of this part.

Section 23. Section 32-9-124, MCA, is amended to read:

"32-9-124. Prohibitions — required disclosure. (1) A mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator may not do any of the following:

(a) retain original documents owned by the borrower and submitted in connection with the loan application;

(b) directly or indirectly employ any scheme to defraud or mislead a borrower, a mortgage lender, or any other person;

(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions;

(d) fail to pay a bona fide third party ~~later than~~ *within* 30 days after recording of the loan closing documents or *within* 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

(e) accept any fees or compensation at closing that were not disclosed as required by state or federal law;

(f) accept any fees or compensation in excess of those allowed by state or federal law;

(g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker, mortgage lender, or mortgage loan originator;

(h) (i) assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; or

(ii) conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part;

(i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part;

(j) fail to account for or deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan that the mortgage lender, mortgage broker, mortgage servicer, or mortgage loan originator is not entitled to retain under the circumstances;

(k) refuse to permit an investigation or examination of the mortgage lender's, mortgage broker's, mortgage servicer's, or mortgage loan originator's books and records or refuse to comply with a department subpoena or subpoena duces tecum;

(l) knowingly withhold, abstract, remove, mutilate, destroy, alter, or keep secret any books, records, computer records, or other information from the department; or

~~(j)~~*(m)* negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the department or another governmental agency.

~~(2) A mortgage lender may not do any of the following:~~

~~(a) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;~~

~~(b) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:~~

~~(i) direct deposit to a borrower's account;~~

~~(ii) wire;~~

~~(iii) bank or certified check;~~

~~(iv) attorney's check drawn on a trust account; or~~

~~(v) other form as specifically authorized by applicable law;~~

~~(c) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;~~

~~(d) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;~~

~~(e) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;~~

~~(f) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;~~

~~(g) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;~~

~~(h) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or~~

~~(i) falsely advertise or misuse names in violation of 18 U.S.C. 709.~~

~~(3)~~*(2)* ~~Prior to providing residential mortgage services to a borrower,~~ *Within 3 business days of taking an application,* the mortgage loan originator working for a mortgage broker, in addition to other disclosures required by this part~~, subsection (3),~~ and other state and federal laws, shall provide to the borrower a written disclosure ~~containing substantially the following language, which must be signed by the borrower:~~

~~"MORTGAGE LOAN ORIGINATION DISCLOSURE~~

~~(Name of licensee) is a licensed mortgage loan originator in Montana authorized to provide mortgage loan origination services to you in connection with your real estate loan. Lenders whose loan products we distribute generally~~

~~provide their loan products to us at a wholesale rate. The rate you pay may be higher.~~

~~SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan:~~

~~(1) (name of licensee) is acting as an independent contractor and not as your agent;~~

~~(2) (name of licensee) enters into separate independent contractor agreements with various lenders; and~~

~~(3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.~~

~~SECTION 2. OUR COMPENSATION.~~

~~(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.~~

~~(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.~~

~~(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.~~

~~(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.~~

~~By signing below, you acknowledge that you have received a copy of this disclosure."~~

~~(4) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or mortgage loan originator is licensed as well as other legally available information.~~

~~(5) The disclosure must include the state license number and the unique identifier issued by the nationwide mortgage licensing system and registry for the mortgage loan originator~~ *as prescribed by the department by rule*. (See compiler's comment regarding contingent suspension.)"

Section 24. Mortgage lender prohibitions. A mortgage lender may not:

(1) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(2) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:

(a) direct deposit to a borrower's account;

(b) wire transfer;

(c) bank or certified check;

(d) attorney's check drawn on a trust account; or

(e) other form as specifically authorized by applicable law;

(3) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;

(4) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;

(5) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;

(6) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of downpayment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(7) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(8) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants; or

(9) falsely advertise or misuse names in violation of 18 U.S.C. 709 or 32-1-402.

Section 25. Mortgage servicer prohibitions. A mortgage servicer may not:

(1) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., and regulations adopted under that act;

(2) fail to comply with applicable state and federal laws and regulations related to mortgage servicing;

(3) fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place the insurance when the mortgage servicer knows or has reason to know that there is insurance in effect;

(4) place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last known coverage amount of insurance;

(5) fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a mortgage lender or mortgage servicer if the borrower provides reasonable proof that the borrower has obtained coverage so that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred so that the forced placement was not necessary, the mortgage servicer shall refund the entire premium.

(6) fail to make all payments from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property in a timely manner so as to ensure that late penalties are not assessed or other negative consequences result regardless of whether the loan is delinquent unless there are not sufficient funds in the account to cover the payments and the mortgage servicer has a reasonable basis to believe that recovery of the funds will not be possible.

Section 26. Section 32-9-125, MCA, is amended to read:

"32-9-125. Trust accounts — bona fide third-party fees. (1) Every mortgage broker and mortgage lender *that accepts borrower funds for bona fide third-party fees* ~~doing business in this state~~ shall:

(a) maintain a trust account at a federally insured financial institution, and the trust account funds may not be commingled with any other funds of the mortgage broker or mortgage lender;

(b) deposit into the trust account any bona fide third-party fee that the mortgage broker or mortgage lender receives; and

(c) pay third-party fees to a bona fide third party from the trust account unless the borrower, the seller, or another person involved in the transaction ~~pays~~ *is contractually bound to pay* the bona fide third party directly.

(2) A mortgage broker or mortgage lender may not charge or receive, directly or indirectly, fees for assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker or mortgage lender has agreed to perform for the borrower are completed. A mortgage broker or mortgage lender may not charge a residential loan application fee in excess of the amount allowed by federal law. Prior to completion of services, the fees provided for in subsection (3) incurred by a bona fide third party in assisting the borrower to obtain a mortgage must be paid.

(3) The following fees must be paid by the borrower, the seller, or another person involved in the transaction directly to the bona fide third party providing the services or must be paid by the borrower, the seller, or another person involved in the transaction to the mortgage broker or mortgage lender for payment of services performed by the bona fide third party:

(a) credit report fees;

(b) notary fees;

(c) title search, appraisal, or survey fees;

(d) rate-lock fees not exceeding 3% of the mortgage loan amount; and

(e) fees paid directly by the borrower, the seller, or another person involved in the transaction to a state or federal government agency or instrumentality for purposes of processing a mortgage application relating to a government-sponsored or guaranteed mortgage program.

(4) The department shall by rule define the meaning of "another person involved in the transaction". (See compiler's comment regarding contingent suspension.)"

Section 27. Section 32-9-126, MCA, is amended to read:

"32-9-126. Revocation, suspension, conditioning, and reinstatement of licenses. (1) The department, upon giving a mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension, conditioning, or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend, condition, or revoke a license if it finds that the licensee has violated any provision of this part.

(2) ~~All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued.~~ *The license of a licensee that refuses to make documents and records relating to the operation of the licensee available upon request by the department must be summarily suspended.*

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended license if ~~there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license~~ *the suspended licensee has complied with all the reinstatement conditions set forth at the time the license was suspended and if the licensee is otherwise qualified to have the license reinstated*.

(5) The department may by order vacate a revocation of a license and enter an appropriate order.

(6) The department may refuse to accept a licensee's offer to surrender a license under the following circumstances:

(a) a final order has been issued in an enforcement action and the licensee has not fully complied with the order regardless of whether compliance is yet due;

(b) the licensee has violated or is under investigation for a suspected violation of this part or any rule adopted under this part;

(c) there is an enforcement action or complaint pending against the licensee; or

(d) the licensee has not made arrangements satisfactory to the department regarding loans in process at the time of the offer of surrender.

(7) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(8) In the event of a revoked, suspended, or surrendered mortgage broker, mortgage lender, mortgage servicer, or loan originator license, fees may not be refunded by the department. (See compiler's comment regarding contingent suspension.)"

Section 28. Section 32-9-128, MCA, is amended to read:

"32-9-128. ~~Registered agent for mortgage broker, mortgage lender, or mortgage loan originator licensee without physical office in state~~ *Registration and registered agent of foreign entities — service of process* — venue. ~~(1) An applicant for a mortgage broker, mortgage lender, or mortgage loan originator license under 32-9-113 who does not maintain a physical office within the state shall file, in a form prescribed by the department, an irrevocable consent appointing the department as the registered agent of the applicant for the purpose of receiving service of any lawful process in a noncriminal suit, action, or proceeding against the applicant or its successors, executor, or administrator that is based on an alleged violation of this part or any administrative rule adopted pursuant to this part. Service on the department has the same force and validity as if served personally on the applicant or the person filing the consent.~~

~~(2) Service must be made by leaving a copy of the process in the office of the department and is effective only if:~~

~~(a) notice of the service and a copy of the process are sent by certified mail to the defendant or respondent at the last-known address on file with the department by the plaintiff, which may be the department, in an action, suit, or proceeding; and~~

~~(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within a time the court~~

~~allows.~~ *(1) A foreign mortgage broker, mortgage lender, or mortgage servicer shall register to do business in this state as a foreign corporation, limited liability company, limited liability partnership, or limited partnership with the secretary of state.*

(2) A foreign mortgage broker, mortgage lender, or mortgage servicer shall provide the name and address of its registered agent for service of process to the department in order to be licensed in this state and shall notify the department in writing within 5 days of a change in the licensee's registered agent's name or address.

(3) For purposes of this part, the department is considered to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a licensee under this part, postage prepaid and addressed to the last-known address of the licensee's registered agent for service of process on file with the department, the last-known address of the licensee on file with the department for an in-state licensee, or in the case of an unlicensed person, the last-known address of the person.

~~(3)~~*(4)* In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this part between the department and a licensee who does not maintain a physical office in this state, venue must be exclusively in Lewis and Clark County.

~~(4) A notice, hearing schedule, or order must be mailed to the person or licensee by certified mail at the last-known address for which the license was issued or, in the case of an unlicensed person, at the last-known address of the person.~~ (See compiler's comment regarding contingent suspension.)"

Section 29. Section 32-9-129, MCA, is amended to read:

"32-9-129. Loan processors and underwriters. (1) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities pertaining to originating a residential mortgage loan.

(2) A loan processor or underwriter who is an independent contractor may not engage in mortgage loan originator activities *as a loan processor or underwriter* unless licensed as a mortgage loan originator under this part. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 30. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority — rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

(d) prescribing forms for applications; and

(e) establishing fees for license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee or person subject to this part as often as necessary in order to carry out the purposes of this part.

(b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.

(5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, or customers of the licensee or person concerning the business of the licensee or person or any other person having knowledge that the department considers relevant.

(6) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

(b) The department has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103;

(ii) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

(iii) any other documents, information, or evidence the department considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.

(7) (a) The total cost for any examination or investigation must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.

(b) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of an

examination or investigation when due must result in the suspension or revocation of a licensee's license.

(8) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this ~~section~~ *part, including agreements to maintain the confidentiality of information under laws, rules, or evidentiary privileges of another state, the federal government, or this state*;

(ii) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state*, without the loss of any privileges or confidentiality protection afforded by state or federal laws, rules, or evidentiary privileges that cover those reports*;

(v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(vi) assess against the licensee or person subject to this part the costs incurred by the department in conducting the examination or investigation.

(c) Except as provided in 32-9-160 and subsection (8)(a)(i) of this section, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

~~(9) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and mortgage lender and a roster of all mortgage loan originators and designated managers and the name of their employing mortgage brokers or employing mortgage lenders. The roster must be available to interested persons and to the general public.~~

~~(10)~~*(9)* Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) participate in the nationwide mortgage licensing system and registry;

(c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and

(d) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage licensing system and registry.

~~(11)~~*(10)* (a) The department may, if the U.S. department of housing and urban development determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the nationwide mortgage licensing system and registry.

(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. department of housing and urban development legislation to address the incompatibility with federal law. The provisions that the United States department of housing and urban development determines to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation.

(11) The department may be approved by the nationwide mortgage licensing system and registry as a provider of educational courses. If the department chooses to become an approved provider of educational courses, it may charge fees to attendees. The amount of the fees must be set by rule and must be commensurate with the total course costs, including the costs of becoming an approved provider. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of presenting education courses. (See compiler's comment regarding contingent suspension.)"

Section 31. Section 32-9-133, MCA, is amended to read:

"32-9-133. Penalties — restitution. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed $5,000 for the first violation and not to exceed $10,000 for each subsequent violation.

(2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. In addition, the department may issue an order revoking, conditioning, or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan origination business.

(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

(4) The fines must be deposited in the department's account in the state special revenue fund and used to administer the provisions of this part.

(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker, mortgage lender, *mortgage servicer,* or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than $250 or more than $1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense. (See compiler's comment regarding contingent suspension.)"

Section 32. Section 32-9-145, MCA, is amended to read:

"32-9-145. Escrow fund. (1) An escrow fund authorized for any purpose by a mortgage loan contract is subject to applicable state and federal requirements. Money received from a borrower by a mortgage lender *or mortgage servicer* licensed under this part must be considered as held in trust immediately upon receipt. The mortgage lender *or mortgage servicer* shall place escrow funds in a depository institution prior to the end of the third business day following their receipt.

(2) An escrow fund account must be a separate account established to hold only borrowers' funds. The account must be designated and maintained for the benefit of borrowers. Escrow funds may not be commingled with any other funds.

(3) Escrow funds must be kept in the segregated account until disbursement. Money maintained in an escrow fund account is exempt from execution, attachment, or garnishment.

(4) A licensee may not encumber the corpus of an escrow fund account or commingle other operating funds with account funds.

(5) An escrow fund account may be used only for:

(a) a payment authorized by the borrower or the mortgage loan contract or required by federal or state law;

(b) a refund to the borrower;

(c) transfer to a depository institution;

(d) transfer to the appropriate mortgage lender or mortgage servicer in the case of a transfer of servicing;

(e) a purpose authorized by the mortgage loan contract; or

(f) purposes of complying with an order issued by the commissioner or a court.

(6) Accounting for escrow funds must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500, and in compliance with 71-1-115. (See compiler's comment regarding contingent suspension.)"

Section 33. Section 32-9-148, MCA, is amended to read:

"32-9-148. Disclosure of mortgage costs by mortgage lender. (1) ~~Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the~~ *A* mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act *of 1974*, 12

U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. ~~If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.~~ *A mortgage lender shall comply with federal laws and rules regarding prepayment penalties.*

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a loan commitment fee, upon approval of the mortgage loan application, if the borrower is provided with a loan commitment in writing that is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the loan commitment, including but not limited to:

(i) the time period during which the loan commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from the date of the loan commitment or the date of mailing, whichever is later;

(ii) the amount and payment terms of the loan commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;

(iii) the expiration date of the loan commitment;

(iv) conditions precedent to closing; and

(v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid loan commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the loan commitment upon the licensee's ability to demonstrate any of the following:

(i) the borrower withdraws the mortgage loan application after the lender has issued a loan commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;

(ii) the borrower has made a material misrepresentation or omission on the mortgage loan application; or

(iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender. (See compiler's comment regarding contingent suspension.)"

Section 34. Mortgage servicer duties. In addition to any duties imposed by other statutes or the common law, a mortgage servicer shall:

(1) safeguard and account for any money handled for the borrower;

(2) follow reasonable and lawful instructions from the borrower;

(3) act with reasonable skill, care, and diligence;

(4) file with the department a complete, current schedule of the ranges of costs and fees the mortgage servicer charges borrowers for servicing-related activities with the mortgage servicer's application and renewal and with any supplemental filings made from time to time;

(5) file with the department upon request a report in a form and format acceptable to the department detailing the mortgage servicer's activities in this state, including:

(a) the number of mortgage loans the mortgage servicer is servicing;

(b) the type and characteristics of the loans in this state;

(c) the number of serviced loans in default, along with the breakdown of 30-day, 60-day, and 90-day delinquencies;

(d) information on loss mitigation activities, including details on workout arrangements undertaken; and

(e) information on foreclosures in this state;

(6) at the time the mortgage servicer accepts assignment of servicing rights for a mortgage loan, disclose to the borrower:

(a) any notice required under federal law or regulation;

(b) a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities, which may not exceed those reported to the department; and

(c) a notice in the form and content acceptable to the department that the mortgage servicer is licensed in Montana and that complaints about the mortgage servicer may be submitted to the department; and

(7) in the event of a delinquency or other act of default on the part of the borrower, act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default.

Section 35. Section 32-9-150, MCA, is amended to read:

"32-9-150. Unique identifier for mortgage brokers, mortgage lenders, *mortgage servicers,* mortgage loan originators, and registered

mortgage loan originators. (1) Each licensed mortgage broker, mortgage lender, *mortgage servicer,* and mortgage loan originator shall post the mortgage broker's, mortgage lender's, *mortgage servicer's,* or mortgage loan originator's unique identifier in a conspicuous place within the office where the licensee principally transacts business.

(2) The department shall ~~post on its website the names of all licensees, together with their license numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed mortgage brokers, mortgage lenders, and mortgage loan originators so that consumers, borrowers, and the public may access that information for use in conjunction with the nationwide mortgage licensing system and registry~~ *provide a link to the consumer access portion of the nationwide mortgage licensing system and registry on the department's website*.

~~(3) The department shall also post on its website the names and unique identifiers of all registered mortgage loan originators conducting business in the state.~~ (See compiler's comment regarding contingent suspension.)"

Section 36. Section 32-9-151, MCA, is amended to read:

"32-9-151. Mortgage call reports. *(1)* Each ~~mortgage broker and mortgage lender entity~~ *licensee* shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.

(2) Each mortgage loan originator shall ensure that all residential mortgage loans that close as a result of the mortgage loan originator's loan origination activities are included in the report of condition submitted to the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"

Section 37. Section 32-9-160, MCA, is amended to read:

"32-9-160. Confidentiality. (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry.

(b) Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.

(2) The department may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department.

(3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

(a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.

(4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

(5) Examination reports, information contained in examination reports, and examiners' work papers are confidential *material that retain their status as trade secrets or confidential proprietary information of the entities that are the subject of the reports despite having been compelled to be produced to the state for examination purposes. Confidential material is not subject to public inspection, subpoena, or discovery. To the extent that examination reports, work papers, and other confidential material contain personal financial information and personal identification information of individuals, those individuals retain a reasonable expectation of privacy in their personal financial or personal identification information*, ~~subject to the licensee's and any uninvolved person's reasonable expectation of privacy~~ and~~,~~ although filed with the department as provided in this part, ~~are~~ *that information is* not subject to public inspection*, subpoena, or discovery except as directed by a court of law*.

(6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, *mortgage servicers,* mortgage brokers, and mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for public access. (See compiler's comment regarding contingent suspension.)"

Section 38. Repealer. The following sections of the Montana Code Annotated are repealed:

32-9-114. Provisional licenses and previously licensed persons.

32-9-127. Compliance of current mortgage brokers, mortgage lenders, and mortgage loan originator licensees with background check and minimum standards — renewals.

Section 39. Codification instruction. [Sections 8, 21, 22, 24, 25, and 34] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 8, 21, 22, 24, 25, and 34].

Approved May 5, 2011

CHAPTER NO. 318

[HB 106]

AN ACT ESTABLISHING THE 24/7 SOBRIETY PROGRAM IN THE DEPARTMENT OF JUSTICE; PROVIDING FOR SOBRIETY TESTING BY COUNTY SHERIFFS OR DESIGNEES; PROVIDING FOR FEES, PROBATIONARY DRIVER LICENSES, ADMINISTRATIVE RULES, AND

PENALTIES; EXPANDING THE PENALTIES FOR A THIRD OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE; AMENDING SECTIONS 45-7-309, 46-18-201, AND 61-5-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Montana 24/7 Sobriety Program Act".

Section 2. Purpose — definitions. (1) The legislature declares that driving in Montana upon a way of the state open to the public is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege must accept the corresponding responsibilities.

(2) The legislature further declares that the purpose of [sections 1 through 6] is:

(a) to protect the public health and welfare by reducing the number of people on Montana's highways who drive under the influence of alcohol or dangerous drugs; and

(b) to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders.

(3) As used in [sections 1 through 6], the following definitions apply:

(a) "Department" means the department of justice provided for in 2-15-2001.

(b) "Sobriety program" or "program" means the 24/7 sobriety program established in [section 3].

(c) "Testing" means a procedure for determining the presence and level of alcohol or a dangerous drug, as defined in 50-32-101, in an individual's blood, breath, or urine and includes any combination of the use of breath testing, drug patch testing, urinalysis, or continuous or transdermal alcohol monitoring.

Section 3. Sobriety program created. (1) There is a statewide 24/7 sobriety program within the department of justice to be administered by the attorney general.

(2) If a county sheriff chooses to participate in the sobriety program, the department shall assist in the creation and administration of the program in the county in the manner provided in [sections 1 through 6]. The department shall also assist counties in which a sobriety program exists in determining alternatives to incarceration.

(3) (a) If a county participates in the program, the sheriff may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the sheriff pursuant to [sections 1 through 6], except that the sheriff's designee may not determine whether to participate in the sobriety program.

(b) The sheriff shall establish the testing locations and times for the county but must have at least one testing location and two daily testing times approximately 12 hours apart.

Section 4. Rulemaking — testing fee. The attorney general shall adopt rules to implement [sections 1 through 6]. The rules must:

(1) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;(2) establish reasonable participation and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;

(3) provide for the establishment and use of local accounts for the deposit of fees collected pursuant to these rules; and

(4) require and provide for the approval of a sobriety program data management technology plan that must be used by the department and participating counties to manage testing, data access, fees and fee payments, and any required reports.

Section 5. Authority of court to order participation in sobriety program — probationary license — condition of parole. (1) If an individual convicted of a second or subsequent offense of driving under the influence in violation of 61-8-401 or second or subsequent offense of driving with excessive alcohol concentration in violation of 61-8-406 has been required to participate in the sobriety program, the court may, upon the individual's successful completion of a court-approved chemical dependency treatment program and proof of insurance pursuant 61-6-301, notify the department, that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual must complete a certain portion of a suspension period before a probationary license may be issued.

(2) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

(3) The court may condition any bond or pretrial release for an individual charged with a second or subsequent violation of 61-8-401 or 61-8-406 upon participation in the sobriety program and payment of the fees required by [section 4].

(4) The court may condition the granting of a suspended execution of sentence, or probation for an individual convicted of a second or subsequent violation of 61-8-401 or 61-8-406 upon participation in the sobriety program and payment of the fees required by [section 4].

(5) The board of pardons and parole, the department of corrections, or a parole officer may condition parole for a second or subsequent violation of 61-8-401 or 61-8-406 upon participation in the sobriety program and payment of the fees required by [section 4].

Section 6. Collection, distribution, and use of testing fees. The sheriff of a county in which a sobriety program exists shall collect the testing fee required by the rules of the department and deposit the fees into the local sobriety program account established pursuant to department rules. The fee must be distributed according to those rules to the proper county for use by the sheriff or the sheriff's designee pursuant to the terms determined by the sheriff in accordance with the provisions of [sections 1 through 6] and the rules implementing [sections 1 through 6].

Section 7. Section 45-7-309, MCA, is amended to read:

"45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when the person knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; ~~or~~

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15*; or*

(g) purposely failing to comply with the requirements of the sobriety program provided for in [sections 1 through 6] if ordered by a court to participate in the program.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 8. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(c), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(vi) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(vii) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(viii) any combination of subsections (2) and (3)(a)(i) through (3)(a)(vii).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) participation in a day reporting program provided for in 53-1-203;

(o) participation in the sobriety program provided for in [sections 1 through 6] for a second or subsequent violation of 61-8-401 or 61-8-406;

~~(o)~~*(p)* any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

~~(p)~~*(q)* any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 9. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver's license. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in *[section 5] and* 61-2-302 *and except as otherwise provided in this section*, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) *(i)* ~~When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon~~ *Upon* receiving a report of *a person's* conviction or forfeiture of bail or collateral not vacated *for a first offense of violating 61-8-401 or 61-8-406*, *the department shall* suspend the driver's license or driving privilege of the person for a period of 6 months.

(ii) Upon receiving a report of a *person's* conviction or forfeiture of bail or collateral *not vacated* for a second~~, third, or subsequent~~ offense *of violating 61-8-401 or 61-8-406* within ~~5 years of the first offense, the department shall~~ *the time period specified in 61-8-734, the department shall* suspend the *driver's* license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course~~,~~ *or* treatment, or both, are completed.

(iii) Upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-401 or 61-8-406 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as required under 61-8-732, the license suspension remains in effect until the course or treatment, or both, are completed.

~~(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.~~

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 10. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 1 through 6].

Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 6, 2011

CHAPTER NO. 319

[HB 111]

AN ACT IMPROVING STATE TAX ADMINISTRATION BY PROVIDING THAT 30% OF THE LODGING FACILITY USE TAX ATTRIBUTABLE TO EXPENDITURES BY STATE AGENCIES FOR IN-STATE LODGING BE DEPOSITED IN THE STATE GENERAL FUND; ELIMINATING THE REIMBURSEMENT OF LODGING FACILITY USE TAXES PAID FROM OTHER STATE FUNDS TO THE STATE GENERAL FUND; AMENDING SECTIONS 15-65-121 AND 15-65-131, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-65-121, MCA, is amended to read:

"15-65-121. Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 17-2-124, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 17-2-124 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The *department shall deposit 30% of the* amount deducted ~~must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies~~ *in the state general fund and distribute the portion of the amount deducted that was paid with federal funds to the department of administration for return to the federal government as provided in 17-3-106(2).* The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the ~~fund or funds from which in-state lodging expenditures were paid by state agencies~~ *state general fund, distributed to the department of administration,* or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the

proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

Section 2. Section 15-65-131, MCA, is amended to read:

"15-65-131. State agencies to account for in-state lodging expenditures. Each state agency shall account for in-state lodging expenditures in a manner that will enable the department to determine total expenditures for in-state lodging by state agencies in order to make ~~an allocation~~ *a deposit* of a portion of the tax proceeds imposed by 15-65-111 ~~to the appropriate fund or funds~~ *in the state general fund and distribute the portion of taxes paid with federal funds to the federal government* as provided in 15-65-121. ~~Unless prohibited under terms of original receipt of the funds used to pay the lodging facility use tax, each fund shall reimburse the state general fund for the deposit made pursuant to 15-65-121.~~"

Section 3. Effective date. [This act] is effective July 1, 2011.

Section 4. Applicability. [Sections 1 and 2] apply to expenditures by state agencies for in-state lodging that are paid after June 30, 2011.

Approved May 5, 2011

CHAPTER NO. 320

[HB 133]

AN ACT REVISING AND CLARIFYING THE PROCESSES AND REQUIREMENTS RELATING TO THE CONTROL OF NOXIOUS WEEDS; AUTHORIZING A WEED CONTROL BOARD TO SEEK A COURT ORDER TO MANAGE NOXIOUS WEEDS; PROVIDING FOR CIVIL PENALTIES FOR FAILURE TO CONTROL NOXIOUS WEEDS; PROVIDING FOR A LIEN ON PROPERTY FOR UNPAID CIVIL PENALTIES; AND AMENDING SECTIONS 7-22-2123, 7-22-2124, AND 7-22-2148, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2123, MCA, is amended to read:

"7-22-2123. Procedure in case of noncompliance — *notice.* (1) *(a)* ~~When~~ *Whenever* a complaint has been made or the board has reason to believe that noxious weeds described in this part are present upon a ~~person's~~ *landowner's* land within the district, ~~that person must be notified~~ *the board shall attempt informal resolution* ~~by mail or telephone~~ of the complaint *or alleged presence of noxious weeds by notifying the landowner by mail or telephone.* ~~and the~~ *If the situation is not resolved after the initial mail or telephone contact, the* board may request inspection of the land *by sending the request by certified mail at least 10 days after the initial contact is attempted.* ~~The~~

(b) If the landowner has an agent for service on file with the secretary of state, the notice must be given by mail to the registered agent. The landowner or the landowner's representative shall respond to the notice within 10 days.

(c) If the board or the board's agent and the landowner or landowner's representative agree to an inspection, the board or ~~its authorized~~ *the board's* agent and the landowner or the landowner's representative shall inspect the land at an agreeable time~~.~~. *The inspection must occur* within ~~10~~ *10* days ~~of notification of the landowner~~ *after the agreed-upon inspection date.* If within ~~10~~ *10* days after ~~notification~~ *sending a certified letter to the address listed on the tax records for the property or the agent of service* the board is unable to ~~gain cooperation of the person~~ *determine the owner of the property or the landowner objects to the inspection*, the board or ~~its authorized~~ *the board's* agent may *seek a court order to* enter and inspect the land to determine if ~~the complaint is valid~~ *noxious weeds are present on the property*.

(2) *(a) (i)* If *the board or the board's agent finds* noxious weeds ~~are found~~ *on the property as a result of the inspection*, the board or ~~coordinator~~ *the board's agent* shall notify the ~~person~~ *landowner* or the ~~person's~~ *landowner's* representative *by certified mail that noxious weeds were found on the property* and *shall* seek voluntary compliance *from the landowner or landowner's representative* with the district noxious weed management program.

(ii) The notice must contain the language specified in this section.

(iii) If ownership of the land is in question or the board believes it is advisable, the board or the board's agent may also post in a conspicuous place on the property a dated order providing notice that noxious weeds have been found on the property and directing the landowner or landowner's representative to comply with the district noxious weed management program.

(b) If *the board or the board's agent is unable to obtain* voluntary compliance ~~or cooperation has not occurred~~ *with the district noxious weed management program by the landowner or landowner's representative* within 10 days ~~of the notification~~ *after the notification or within 10 days after posting the notice* ~~required~~ under ~~this~~ subsection *(2)(a)*, the ~~person~~ *landowner* is considered to be in noncompliance and is subject to appropriate control measures pursuant to 7-22-2124~~.~~ *or, at the discretion of the board of county commissioners, a civil penalty as established by the board following a public hearing after providing notice as required in 7-1-2121.*

(c) (i) Within 10 days after the board has issued a notice to comply with the noxious weed management program, the landowner or landowner's representative may file a request for a hearing before the board if the landowner or landowner's representative disagrees with the noxious weed management control measures proposed to be taken by the board.

(ii) If the landowner's objection to the board's action remains after the hearing, the landowner has 10 days to appeal the board's decision to the district court having jurisdiction in the county in which the property is located.

(d) If a request for a hearing has been filed pursuant to subsection (2)(c), the board or the board's agent may not take any action to control the noxious weeds until after the hearing and authorization from the board or the court.

(e) If the board imposes the civil penalty authorized in subsection (2)(b) and a hearing is requested in court, the penalty may be sought for each year or portion of a year during which the landowner is not in compliance with the district noxious weed management program.

(3) A ~~person~~ *landowner* is considered to be in compliance if the ~~person~~ *landowner* submits and the board accepts a proposal to undertake specified control measures and ~~is~~ *remains* in compliance as long as the ~~person~~ *landowner* performs according to the terms of the proposal. The proposal must include a requirement that the ~~person~~ *landowner or landowner's representative* notify the board as measures in the proposal are taken. If the measures proposed to be taken extend beyond the current growing season, the proposal and acceptance must be in writing.

(4) In accepting or rejecting a proposal, the board shall consider the economic impact on the ~~person~~ *landowner* and the ~~person's~~ *landowner's* neighbors, practical biological and environmental limitations, and alternative control methods to be used.

(5) If a court issues an order approving a board's actions, the court retains jurisdiction over the matter:

(a) until the actions specified in the weed management plan or court order are complete;

(b) for the length of time specified in the order; or

(c) for 5 years if the order does not specify a time limit.

(6) The department shall provide boards with a uniform notification form that must be used when notifying landowners of potential noncompliance with this part. The form must:

(a) list the noxious weeds found on the property;

(b) provide the legal description of the property;

(c) provide the address of the property, if available;

(d) state the fact that the presence of the weeds violates state law and that the landowner has 10 days after mailing of the notice to contact the board or its agent;

(e) provide the address and phone number for the board or its agent;

(f) notify the landowner of the landowner's:

(i) responsibility to submit a weed management proposal; and

(ii) right to request a hearing to contest the finding of noncompliance, including the timeframe for making the request; and

(g) specify the actions the board may take if the landowner fails to remove the weeds, including but not limited to the anticipated costs of destroying the weeds, the 25% penalty allowed under 7-22-2124, and the board's intent to file a court action to impose a civil fine that may become a lien upon the property."

Section 2. Section 7-22-2124, MCA, is amended to read:

"7-22-2124. Destruction of weeds by board — *court order — deposits.* (1) *(a)* ~~If corrective action is not taken within the time specified in 7-22-2123(2)~~

~~and a proposal is not made and accepted as provided in 7-22-2123(3), the~~ *The* board may *seek a court order to* enter upon the ~~person's~~ *landowner's* land and institute appropriate *noxious weed* control measures*, which may include contracting with a commercial applicator pursuant to subsection (1)(c)(iii), if:*

(i) the landowner or the landowner's representative does not take corrective action within the time specified in 7-22-2123(2);

(ii) a proposal is not made and accepted as provided in 7-22-2123(3); and

(iii) the board does not receive a formal objection or a request for a hearing.

(b) If the board decides to seek a civil penalty under 7-22-2123(2)(b) instead of taking the control measures, the board shall obtain judicial approval from the court for the penalty.

(c) (i) ~~In that case~~ *After taking action pursuant to subsection (1)(a) or obtaining a court order and instituting appropriate noxious weed control measures*, the board shall submit a bill to the ~~person~~ *landowner*~~, itemizing hours of labor, material, and equipment time, together with~~ *that covers the costs of the weed control measures and contains* a penalty not exceeding 25% of the total cost incurred ~~except that a penalty may not be assessed if contact was not made with the landowner or the landowner's representative pursuant to 7-22-2123~~*. The bill must itemize the hours of labor, cost of material, equipment time, legal fees, and court costs or provide an invoice from a commercial applicator if the board contracted for weed control pursuant to subsection (1)(c)(iii). The board shall provide a copy of the bill, including the penalty, to the county clerk and recorder.* ~~When the penalty is collected, it must be credited to the noxious weed fund created pursuant to 7-22-2141 to be used for appropriate control measures pursuant to this section.~~

(ii) Labor*, material,* and equipment *used by the board in instituting appropriate noxious weed control measures* must be valued at the current rate paid for commercial management operations in the district. *The bill must reflect actual legal fees and court costs incurred by the board.* The bill *submitted to the landowner under subsection (1)(b)(i)* must specify and order a payment due date of 30 days from the date the bill is sent.

(iii) The board may enter into an agreement with a commercial applicator, as defined in 80-8-102, to destroy the weeds. The commercial applicator shall ~~agree to~~ carry ~~any~~ *all* insurance required by the board.

(c) All penalties collected pursuant to this section are in addition to other penalties authorized under this chapter and must be credited to a noxious weed fund created under 7-22-2141.

~~(2) A copy of the bill must also be submitted by the board to the county clerk and recorder.~~

~~(3)~~*(2)* If a ~~person receiving~~ *landowner who received* an order to take corrective action requests an injunction or stay of the corrective action in district court within 10 days of receipt of the order, the board may not institute control measures until the matter is finally resolved, except in case of an emergency. ~~In that case~~ *If the board declares an emergency and institutes appropriate measures to control the noxious weeds*, the ~~person~~ *landowner who received the order under 7-22-2123(2)(a)* is liable for costs as provided in subsection (1) *of this section* only to the extent determined appropriate by the board, *the board of county* commissioners, or *the* court that finally resolves the matter."

Section 3. Section 7-22-2148, MCA, is amended to read:

"7-22-2148. ~~Tax liability for payment~~ *Payment* of weed control expenses — *tax liability* — *lien.* (1) *(a)* The expenses ~~referred to in~~ *incurred*

by the board for noxious weed control undertaken pursuant to 7-22-2124 ~~shall~~ *must* be paid by the county out of the noxious weed fund~~, and unless~~.

(b) If the sum to be repaid by the ~~person~~ *landowner* billed under 7-22-2124 is *not* repaid on or before the date due, the county clerk shall certify the amount ~~thereof~~ *due*, with the description of the land to be charged, and shall enter the ~~same~~ *amount* on the assessment list of the county as a special tax on the land. If the land ~~for any reason~~ is exempt from general taxation *for any reason*, the amount ~~of such charge~~ *due and to be repaid* may be recovered by direct claim against the ~~lessee~~ *landowner* and collected in the same manner as personal taxes. *(c)* ~~When such charges are~~ *All amounts* collected~~, they shall be credited to~~ *pursuant to subsection (1)(b) must be deposited in* the noxious weed fund.

~~(2) In determining what lands are included as land covered by the special tax and are described in the certificate of the county clerk, it is presumed that all work done upon any of the land of any one landowner is for the benefit of all of the land within the district belonging to the owner, together with the parcel upon which the work was done, and the amount certified becomes a tax upon the whole thereof .~~

(2) If a civil penalty is imposed under 7-22-2123, the penalty is, until paid in full, a lien in the amount of the penalty on the infested parcel of the property that lies within the district and belongs to the landowner on whom the penalty was imposed."

Approved May 5, 2011

CHAPTER NO. 321

[HB 198]

AN ACT CLARIFYING A PUBLIC UTILITY'S POWER OF EMINENT DOMAIN; CLARIFYING THAT A PERSON ISSUED A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT HAS THE POWER OF EMINENT DOMAIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Power of eminent domain. A public utility as defined in 69-3-101 may acquire by eminent domain any interest in property, as provided in Title 70, chapter 30, for a public use authorized by law to provide service to the customers of its regulated service.

Section 2. Power to exercise eminent domain. A person issued a certificate pursuant to this chapter may acquire by eminent domain any interest in property, as provided in Title 70, chapter 30, for a public use authorized by law to construct a facility in accordance with the certificate.

Section 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 1, and the provisions of Title 69, chapter 3, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 75, chapter 20, part 1, and the provisions of Title 75, chapter 20, part 1, apply to [section 2].

Section 4. Contingent voidness. If a repeal of the provisions of Title 75, chapter 1, parts 1 through 3, or a repeal of the provisions of Title 75, chapter 20, parts 1 through 4, is passed and approved during the 62nd legislative session, then [this act] is void.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [Section 2] applies retroactively, within the meaning of 1-2-109, to certificates issued after September 30, 2008.

Approved May 9, 2011

CHAPTER NO. 322

[HB 249]

AN ACT LIMITING THE PERSONAL LIABILITY OF A CORPORATE SHAREHOLDER FOR THE ACTS AND DEBTS OF THE CORPORATION; AND AMENDING SECTION 35-1-534, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-534, MCA, is amended to read:

"35-1-534. Liability of shareholders. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in 35-1-623 or specified in the subscription agreement as provided in 35-1-622.

(2) Unless otherwise provided in the articles of incorporation, a shareholder ~~of~~ *who is:*

(a) active in a corporation is not personally liable for the acts or debts of the corporation ~~except that a shareholder may become personally liable by reason of that shareholder's own acts or conduct~~ *except that a shareholder may become personally liable by reason of that shareholder's own acts or conduct;*

(b) not active in the corporation is not personally liable unless the corporate veil is pierced or the shareholder agrees in writing to assume personal liability."

Approved May 6, 2011

CHAPTER NO. 323

[HB 262]

AN ACT MAKING PERMANENT THE EMERGENCY MEDICAL SERVICE PROVIDERS GRANT PROGRAM; APPROPRIATING FUNDS; REPEALING SECTION 12, CHAPTER 437, LAWS OF 2009; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 12, Chapter 437, Laws of 2009, is repealed.

Section 2. Appropriation. There is appropriated $1 million from the highway nonrestricted account provided for in 15-70-125 to the department of transportation in each fiscal year of the biennium beginning July 1, 2011, to carry out the purposes of the emergency medical service providers grant program provided for in Title 61, chapter 2, part 5. This is a one-time-only appropriation for the biennium beginning July 1, 2011.

Section 3. Coordination instruction. If both House Bill No. 2 and [this act] are passed and approved and if House Bill No. 2 includes an appropriation for the emergency medical service providers grant program, then [section 2 of this act] is void.

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 324

[HB 296]

AN ACT RELATING TO THE SOUTHWESTERN MONTANA VETERANS' HOME; EXTENDING CIGARETTE TAX REVENUE CONTRIBUTIONS TO AN ACCOUNT FOR USE IN CONSTRUCTION OF THE SOUTHWESTERN MONTANA VETERANS' HOME; ESTABLISHING THE SOUTHWESTERN MONTANA VETERANS' HOME CAPITAL PROJECT; APPROPRIATING MONEY FOR A CAPITAL PROJECT; PROVIDING FOR OTHER MATTERS RELATED TO THE APPROPRIATION; AUTHORIZING CONSTRUCTION; PROVIDING CONDITIONS FOR A TRANSFER OF MONEY TO THE GENERAL FUND; AMENDING SECTION 16-11-119, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the 61st Legislature in section 1, Chapter 461, Laws of 2009, provided for the establishment of a southwestern Montana state veterans' home; and

WHEREAS, the 61st Legislature established a state special revenue account that is funded by a portion of cigarette tax collections for the construction of a state veterans' home in southwestern Montana; and

WHEREAS, a portion of cigarette tax collections has been historically used for the operation and maintenance of state veterans' nursing homes; and

WHEREAS, based on a recent cost estimate, additional cigarette tax collections are needed in the state special revenue account to construct the state veterans' home in southwestern Montana in the future.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-119, MCA, is amended to read:

"16-11-119. (Temporary) Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or $2 million, whichever is greater, in an account in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes. The department of public health and human services may not expend more money from the account than is appropriated by the legislature. Subject to subsection (2) of this section, the department may not transfer funds in the account or expenditure authority related to the account pursuant to 17-7-139, 17-7-301, or 17-8-101.

(b) for fiscal years ~~ending June 30, 2010,~~ *beginning July 1, 2011,* and *ending* June 30, ~~2011~~ *2015*, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana;

(c) 2.6% in the long-range building program account provided for in 17-7-205;

(d) 44% in the health and medicaid initiatives account provided for in 53-6-1201; and

(e) the remainder to the state general fund.

(2) If money in the state special revenue account for the operation and maintenance of state veterans' nursing homes exceeds $2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201. (Terminates June 30, 2011—sec. 35(1), Ch. 486, L. 2009.)

16-11-119. (Effective July 1, 2011) Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 8.3% or $2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) for fiscal years ~~ending June 30, 2010,~~ *beginning July 1, 2011,* and *ending* June 30, ~~2011~~ *2015*, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana;

(c) 2.6% in the long-range building program account provided for in 17-7-205;

(d) 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

(e) the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds $2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

(a) one-half in the state general fund; and

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201."

Section 2. Definitions. For the purposes of [sections 2 through 6], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, and furnishing of the project authorized in [sections 3 through 6].

(2) "Southwestern Montana veterans' home project" means the capital project in Silver Bow County for the purpose of a state veterans' nursing home authorized in [sections 3 through 6]. The project is administered by the department of public health and human services pursuant to 53-1-602.

Section 3. Planning and design. The department of administration may proceed with the planning and design of the southwestern Montana veterans' home project prior to the receipt of other funding sources. The department of administration may use interentity loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 4. Capital project — contingent funds. If the southwestern Montana veterans' home project is financed, in whole or in part, with

appropriations contingent upon the receipt of other funding sources, the department of administration may not let the project for bid until the department of public health and human services has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 5] for the project.

Section 5. Capital project appropriations. (1) There is appropriated $4,812,500 from state special revenue account established in section 2, Chapter 461, Laws of 2009, to the department of administration for the southwestern Montana veterans' home project.

(2) There is appropriated $8,937,500 from the federal special revenue fund to the department of administration for the southwestern Montana veterans' home project.

(3) The department of administration is authorized to transfer the appropriations in subsections (1) and (2) among the necessary fund types for this project.

Section 6. Legislative consent and intent. The appropriations authorized in [section 5] constitute legislative consent for the southwestern Montana veterans' home project within the meaning of 18-2-102. The legislature intends for the project to be part of the long-range building program.

Section 7. Contingency — termination and transfer to the general fund. If House Bill No. 439 is passed and approved in a form that appropriates at least $5 million from the capital projects fund for the construction of the southwestern Montana veterans' home and [sections 2 through 7 of House Bill No. 439] become effective pursuant to the contingency contained in [section 10 of House Bill No. 439], then:

(1) [sections 1 through 6 of this act] terminate on the date on which [sections 2 through 7 of House Bill No. 439] become effective;

(2) the state treasurer shall transfer the remaining fund balance in the state special revenue fund established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana to the general fund; and

(3) the department of administration shall notify the code commissioner of the occurrence of any determination made pursuant to this section and the date of the occurrence.

Section 8. Coordination instruction. If both Senate Bill No. 31 and [this act] are passed and approved, then [section 12 of Senate Bill No. 31], amending 16-11-119, is void.

Section 9. Effective date. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1, 5, and 6] are effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 325

[HB 297]

AN ACT EXTENDING THE TIME FOR APPLYING FOR A HISTORIC RIGHT-OF-WAY ON STATE LANDS; AMENDING SECTION 77-1-130, MCA; AMENDING SECTION 5, CHAPTER 461, LAWS OF 1997, SECTION 6,

CHAPTER 270, LAWS OF 2001, AND SECTIONS 2, 3, AND 4, CHAPTER 57, LAWS OF 2005; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-130, MCA, is amended to read:

"77-1-130. (Temporary) Recognition of historic right-of-way — criteria for right-of-way deed — conditions — fees. (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant's private property, to provide continuation of a county road, or to provide for authorization of existing utilities by filing an application with the department by October 1, ~~2011~~ *2015*, on a form prescribed by the department. An application must be accompanied by:

(a) an application fee of $50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way applied for before 1997 and that the use has continued to the present;

(ii) describing the purpose for which the right-of-way was used before 1997; and

(iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and

(c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or

(ii) other evidence of the use of the right-of-way applied for.

(2) The department shall review an application and other evidence submitted pursuant to subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

(a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of the historic right-of-way as provided in subsection (4);

(b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);

(c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

(d) the deed is approved by the board.

(3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant's successor in interest with the approval of the department. The department may not withhold approval for any reason other than that the use of the historic right-of-way is contrary to subsection (5).

(4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the acreage of the historic right-of-way.

(b) The amount collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund established for receipt of income from the land over which a historic right-of-way is granted.

(5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

(a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road or utility facilities existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines that there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter.

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land. (Terminates October 1, ~~2016~~ *2025—secs. 2, 3, 4, Ch. ~~57, L. 2005~~*.)"

Section 2. Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ *2025*."

Section 3. Section 6, Chapter 270, Laws of 2001, is amended to read:

"**Section 6.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ *~~2011~~ 2025*.""

Section 4. Section 2, Chapter 57, Laws of 2005, is amended to read:

"**Section 2.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ *~~2016~~ 2025*.""

Section 5. Section 3, Chapter 57, Laws of 2005, is amended to read:

"**Section 3.** Section 6, Chapter 270, Laws of 2001, is amended to read:

"**Section 6.** Section 5, Chapter 461, Laws of 1997, is amended to read:

"**Section 5. Termination.** [This act] terminates October 1, ~~2003~~ *~~2011~~ ~~2016~~ 2025*."""

Section 6. Section 4, Chapter 57, Laws of 2005, is amended to read:

"**Section 4. Termination.** [Section 1] terminates October 1, ~~2016~~ *2025*."

Section 7. Termination. [Section 1] terminates October 1, 2025.

Approved May 5, 2011

CHAPTER NO. 326

[HB 370]

AN ACT INCREASING THE OPTIONAL MOTOR VEHICLE REGISTRATION FEE FOR OPERATIONS AND MAINTENANCE AT STATE PARKS AND STATE-OWNED FACILITIES AT VIRGINIA CITY AND NEVADA CITY; REVISING THE OPTIONAL MOTOR VEHICLE REGISTRATION FEE

PROCESS; AMENDING SECTIONS 23-1-105 AND 61-3-321, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges — *use of motor vehicle registration fee.* (1) The department may levy and collect reasonable fees or other charges for the use of privileges and conveniences that may be provided and to grant concessions that it considers advisable, except as provided in subsections (2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and either 62 years of age or older or certified as disabled in accordance with rules adopted by the department.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321(18)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department.

(7) Any increase in the motor vehicle registration fee collected pursuant to 61-3-321(18)(a) on or after [the effective date of this act] that is dedicated to state parks must be used by the department for maintenance and operation of state parks."

Section 2. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles,

snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (19):

(2) Unless a light vehicle is permanently registered under 61-3-562, the annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

(a) if the vehicle is 4 or less years old, $217;

(b) if the vehicle is 5 through 10 years old, $87; and

(c) if the vehicle is 11 or more years old, $28.

(3) Except as provided in subsection (14), the one-time registration fee based on the declared weight of a trailer, semitrailer, or pole trailer is as follows:

(a) if the declared weight is less than 6,000 pounds, $61.25; or

(b) if the declared weight is 6,000 pounds or more, $148.25.

(4) Except as provided in subsection (14), the one-time registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411, based on the weight of the vehicle, is as follows:

(a) 2,850 pounds and over, $10; and

(b) under 2,850 pounds, $5.

(5) Except as provided in subsection (14), the one-time registration fee for off-highway vehicles other than a quadricycle or motorcycle is $61.25.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is $22.75.

(7) (a) The annual registration fee for a motor home, based on the age of the motor home, is as follows:

(i) less than 2 years old, $282.50;

(ii) 2 years old and less than 5 years old, $224.25;

(iii) 5 years old and less than 8 years old, $132.50; and

(iv) 8 years old and older, $97.50.

(b) The owner of a motor home that is 11 years old or older and that is subject to the registration fee under this section may permanently register the motor home upon payment of:

(i) a one-time registration fee of $237.50;

(ii) unless a new set of license plates is being issued, an insurance verification fee of $5, which must be deposited in the account established under 61-6-158; and

(iii) if applicable, five times the renewal fees for personalized license plates under 61-3-406.

(8) (a) Except as provided in subsection (14), the one-time registration fee for motorcycles and quadricycles registered for use on public highways is $53.25, and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50.

(b) An additional fee of $16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(9) Except as provided in subsection (14), the one-time registration fee for travel trailers, based on the length of the travel trailer, is as follows:

(a) under 16 feet in length, $72; and

(b) 16 feet in length or longer, $152.

(10) Except as provided in subsection (14), the one-time registration fee for a motorboat, sailboat, personal watercraft, or motorized pontoon required to be numbered under 23-2-512 is as follows:

(a) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, $65.50;

(b) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, $125.50; and

(c) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, $295.50.

(11) (a) Except as provided in subsections (11)(b) and (14), the one-time registration fee for a snowmobile is $60.50.

(b) (i) A snowmobile that is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers is assessed:

(A) a fee of $40.50 in the first year of registration; and

(B) if the business reregisters the snowmobile for a second year, a fee of $20.

(ii) If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the registration fee imposed in subsection (11)(a).

(12) (a) Except as provided in subsection (12)(b), a fee of $10 must be collected when a new set of standard license plates, a new single standard license plate, or a replacement set of special license plates required under 61-3-332 is issued. The $10 fee imposed under this subsection does not apply when previously issued license plates are transferred under 61-3-335. All registration fees imposed under this section must be paid if the vehicle to which the plates are transferred is not currently registered.

(b) Until January 1, 2015, an additional fee of $15 must be collected if a vehicle owner elects to keep the same license plate number from license plates issued on or after January 1, 2006, but before January 1, 2010, when replacement of those plates is required under 61-3-332(3).

(c) The fees imposed in this subsection (12) must be deposited in the account established under 61-6-158, except that $2 of the fee imposed in subsection (12)(a) must be deposited in the state general fund.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202, or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520.

(14) Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section.

(15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.

(18) (a) Unless a person exercises the option in *either* subsection (18)(b) *or (18)(c)*, an additional fee of ~~$4~~ *$6* must be collected for each light vehicle registered under this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the ~~$4~~ *$6* fee, the department of fish, wildlife, and parks shall use ~~$3.50~~ *$5.37* for state parks, 25 cents for fishing access sites, and ~~25~~ *38* cents for the operation of state-owned facilities at Virginia City and Nevada City.

(b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional ~~$4~~ *$6* fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.

(c) (i) A person who registers one or more light vehicles may, at the time of annual registration, certify that the person does not intend to use any of the vehicles to visit state parks and fishing access sites and may make a written election not to pay the additional $6 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected at any subsequent annual registration unless the person makes the written election to pay the additional fee on one or more of the light vehicles.

(ii) The written election not to pay the additional fee on a light vehicle expires if the vehicle is registered to a different person.

(19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of $5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.

(20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721."

Section 3. Effective date. [This act] is effective January 1, 2012.

Approved May 6, 2011

CHAPTER NO. 327

[HB 409]

AN ACT REVISING THE MEMBERSHIP OF THE COMMISSION ON PROVIDER RATES AND SERVICES; ALLOWING FOR APPOINTMENT OF TECHNICAL ADVISORS; AND AMENDING SECTION 53-10-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-10-203, MCA, is amended to read:

"53-10-203. Commission on provider rates and services. (1) The department shall form an advisory commission to be known as the commission on provider rates and services to provide information to the department concerning provider services, costs, and reimbursement rates. The commission membership ~~must include a maximum of~~ *may consist of up to* 15 individuals representing providers, consumers of provider services, and family members of consumers and is as follows:

(a) at least three providers;

(b) at least three of a combination of consumers of provider services and family members of consumers;

~~(c) two employees of the department;~~

~~(d) one representative from the legislative fiscal division;~~

~~(e) one representative from the governor's office on budget and program planning;~~

~~(f)~~*(c)* subject to 5-5-234, one member of the majority party and one member of the minority party of the house of representatives; and

~~(g)~~*(d)* subject to 5-5-234, one member of the majority party and one member of the minority party of the senate.

(2) (a) The following individuals shall participate as nonvoting members in commission meetings:

(i) a representative of the legislative fiscal division who is responsible for analyzing the department's budget;

(ii) a representative of the office of budget and program planning who is responsible for analyzing the department's budget and assisting in policy evaluation for the department; and

(iii) two department employees, one of whom must have responsibilities for developing and implementing policies related to the medicaid program and one of whom must have an in-depth knowledge of the topics under discussion by the commission.

(b) The individuals listed in subsection (2)(a) must be provided with all materials provided to the commission and be offered an opportunity to comment on matters before the commission.

~~(2)~~*(3)* Except as provided in this section, the commission is subject to the provisions of 2-15-122.

~~(3)~~*(4)* Except as provided in this section, members shall serve for a term of 2 years and may be reappointed by the appointing authority for one additional term. A member appointed to fill an unexpired term may be appointed for an additional two terms. The appointing authority shall stagger the first terms of the first board to terms of 2 to 4 years. Members appointed to represent state departments, offices, or other state bodies may be appointed and reappointed as the department determines necessary.

~~(4)~~*(5)* The commission shall elect a presiding officer and vice presiding officer and by vote determine its rules of operation. The commission shall meet at the call of the presiding officer, who shall determine meeting times in consultation with the department.

(6) The commission may appoint, by majority vote, up to three technical advisors with experience in providing services to the populations served by the department. The technical advisors:

(a) may take part in commission meetings but may not vote on matters before the commission; and

(b) may not be reimbursed for their time or travel.

~~(5)~~*(7)* The commission is allocated to the department for administrative purposes only as provided in 2-15-121."

Approved May 6, 2011

CHAPTER NO. 328

[HB 458]

AN ACT GENERALLY REVISING LAWS RELATED TO OUTFITTING; ELIMINATING NET CLIENT HUNTER USE EXPANSION; REVISING BOARD OF OUTFITTER DUTIES REGARDING NET CLIENT HUNTER USE; ELIMINATING CERTAIN FEES; AMENDING SECTIONS 2-15-1773, 37-47-201, 37-47-316, AND 37-47-318, MCA; AND REPEALING SECTION 37-47-317, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1773, MCA, is amended to read:

"2-15-1773. Board of outfitters. (1) There is a board of outfitters.

(2) The board consists of the following seven members to be appointed by the governor:

(a) one big game hunting outfitter;

(b) one fishing outfitter;

(c) two outfitters who are engaged in the fishing and hunting outfitting business;

(d) two sportspersons; and

(e) one member of the general public.

(3) ~~(a) A subcommittee composed of five members of the board shall review net client hunter use expansion requests as provided in 37-47-316, based on the criteria provided in 37-47-317, and report its determinations to the full board.~~ A favorable vote of at least a majority of all members of the board is required to adopt any resolution, motion, or other decision.

~~(b) The subcommittee must consist of the two hunting outfitters, the two sportspersons, and the one member of the public serving on the board pursuant to subsection (2).~~

(4) A vacancy on the board must be filled in the same manner as the original appointment.

(5) The members shall serve staggered 3-year terms and take office on the day they are appointed.

(6) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(7) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133."

Section 2. Section 37-47-201, MCA, is amended to read:

"37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards, guide standards, and professional guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional

guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(c) rules specifying standards for review and approval of proposed new operations plans involving hunting use ~~or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan~~. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. ~~Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services.~~

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access enhancement programs.

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (4)(d)~~.~~*;*

(7) maintain records of net client hunter use."

Section 3. Section 37-47-316, MCA, is amended to read:

"37-47-316. ~~Request for net client hunter use expansion — operation — transfer~~ *Transfer* of ~~NCHU~~ *net client hunter use* upon transfer of operations plan. ~~(1) An outfitter who wishes to establish or expand NCHU shall present an expansion request to the board. A newly licensed outfitter licensed after April 28, 2001, has 5 1/2 years from the date of first licensure to establish NCHU, unless the newly licensed outfitter is purchasing the business of an existing outfitter, in which case the provisions of subsection (5) apply. The board shall evaluate the request based on the criteria provided in 37-47-317.~~

~~(2) For any establishment or expansion of NCHU approved by the board after March 1, 1996, the outfitter has until December 31, 2004, to establish the new NCHU. After December 31, 2004, the outfitter's client base must be adjusted to reflect the highest number of clients actually served, up to but not exceeding the number of clients authorized by the NCHU expansion request. This subsection (2) does not apply to an outfitter newly licensed after April 28, 2001.~~

~~(3) An outfitter may exceed the NCHU in any given year by the following percentages without formally requesting an NCHU expansion:~~

~~(a) 10% for an outfitter with 1 to 50 clients;~~

~~(b) 8% for an outfitter with 51 to 100 clients; and~~

~~(c) 2% for an outfitter with 101 to 300 clients.~~

~~(4) When an expansion of NCHU is approved, the outfitter who is granted the expansion shall operate within the limits of the NCHU. The flexibility to exceed NCHU in any given year, as outlined in subsection (3), does not apply to an outfitter who has been previously granted an NCHU expansion.~~

~~(5)~~ The NCHU of an existing outfitting business transfers with the operations plan for that business unless the business has not been in operation for at least 3 years. Upon the expiration of 5 1/2 years after transfer, the client base must be adjusted to reflect the highest number of clients served in any category during the preceding 5 1/2 years, not to exceed the total authorized by the NCHU."

Section 4. Section 37-47-318, MCA, is amended to read:

"37-47-318. Fees in addition to annual license fee — allocation. ~~(1)~~ In addition to the fees required in 37-47-306 for an outfitter providing hunting services, ~~the following fees apply:~~

~~(a) An~~ *an* outfitter shall pay an annual fee of $2 for each client served.

~~(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.~~

~~(c) (i) An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations.~~

~~(ii) A fee is not required for the following:~~

~~(A) an outfitter's base of operations camp;~~

~~(B) camps established before January 1, 1999;~~

~~(C) camps established on public land when use is directly regulated by public land use policies; or~~

~~(D) camps on corporate timberlands where public access is not restricted.~~

~~(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request.~~

~~(2) Fees~~ *The fee* collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. ~~The fees collected must be allocated as follows:~~

~~(a)~~ Revenue generated by the ~~$2~~ fee ~~imposed in subsection (1)(a), the $500 fee imposed in subsection (1)(b), and the $2,000 fee imposed in subsection (1)(d)~~ must be split equally between the board and the department of fish, wildlife, and parks.

~~(b) Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.~~"

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:

37-47-317. Criteria for board evaluation of NCHU expansion request — public comments.

Approved May 6, 2011

CHAPTER NO. 329

[HB 518]

AN ACT ALLOWING PEOPLE SUFFERING FROM MENTAL ILLNESS TO PREPARE A MENTAL HEALTH CARE ADVANCE DIRECTIVE DURING PERIODS OF MENTAL CAPACITY FOR USE DURING PERIODS OF MENTAL INCAPACITY; PROVIDING IMMUNITY FOR HEALTH CARE PROVIDERS AND INSTITUTIONS IN CERTAIN SITUATIONS; PROVIDING FOR JUDICIAL REVIEW; AMENDING SECTION 72-5-402, MCA; AND REPEALING SECTION 53-21-153, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 20] is to:

(1) promote more timely, informed, compassionate, and effective mental health care;

(2) recognize the right of any person who has capacity to give or withhold informed consent for mental health services;

(3) prevent unnecessary delays in receiving care for a mental disorder in times of impending or actual crisis;

(4) allow a person with mental illness to provide the legal authority for provision of health care during a period of incapacity, even over the person's own protest;

(5) reduce the use of costly legal interventions, including emergency detentions, civil commitment, involuntary medication, and guardianship;

(6) minimize the impacts of crisis on people, families, communities, and providers; and

(7) support the relationship between the provider and the patient by promoting thoughtful, constructive, and timely communication.

Section 2. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Agent" means a person designated in a directive to make health care decisions for the principal granting power.

(2) "Capacity" is the ability of a person to understand the significant benefits and risks of and alternatives to proposed health care and to make and communicate a health care decision.

(3) "Directive" means a mental health care advance directive or any part of a mental health care advance directive.

(4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(5) "Incapacitated" means that a person is determined by the supervising health care provider or a court to lack the ability to give or withhold consent for medical care.

(6) "Principal" means a person who executes a directive, whether or not that directive designates an agent to make health care decisions.

(7) "Supervising health care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health care provider who undertakes primary responsibility for a principal's health care.

Section 3. Presumption of capacity. (1) A person is presumed to have capacity to make a health care decision and to create or revoke a directive.

(2) [Sections 1 through 20] do not affect the right of a person to make health care decisions while having capacity to do so.

Section 4. Scope of mental health care advance directive. (1) An adult with capacity may execute a directive. A minor at least 16 years of age with capacity or an emancipated minor as defined in 41-1-401 with capacity may execute a directive.

(2) A directive must:

(a) be in writing;

(b) contain language that clearly indicates that the principal intends to create a directive;

(c) be dated and signed by the principal or at the principal's direction and in the principal's presence if the principal is unable to sign; and

(d) be notarized.

(3) A directive executed in accordance with [sections 1 through 20] is presumed to be valid. The inability to honor one or more provisions of a directive does not affect the validity of the remaining provisions.

(4) A directive may include any provision relating to mental health treatment, any other medical treatment that may directly or indirectly affect mental health, and the general care of the principal. A directive may include but is not limited to:

(a) instructions for mental health treatment, including medical, behavioral, and social interventions;

(b) consent to specific types of mental health treatment, including medications, other medical treatment, hospitalization, and nonmedical interventions;

(c) refusal to consent to specific types of mental health treatment;

(d) consent to admission to and retention in a facility for mental health treatment;

(e) instructions limiting the revocability of the directive;

(f) descriptions of situations that may cause the principal to experience a mental health crisis;

(g) descriptions of behaviors and other indicators that the principal lacks capacity;

(h) instructions to apply interventions that deescalate crisis behaviors and instructions to avoid interventions that escalate crisis behaviors;

(i) instructions regarding who should or should not be notified of the principal's admission to a treatment facility or be allowed to visit the principal at the facility;

(j) appointment of an agent to make mental health treatment decisions on the principal's behalf; and

(k) the principal's nomination of a guardian, limited guardian, or conservator for consideration by the court if guardianship proceedings are commenced.

Section 5. Validity of appointment of agent. If the directive appoints an agent, the agent may accept the appointment by signing the directive. The agent's signature does not have to be witnessed, notarized, or otherwise validated. The lack of agent's signature does not affect the validity of the

directive. The directive may provide for one or more alternate agents. The authority of the agent is in effect only after a determination of incapacity as provided in [sections 1 through 20] and only for as long as the period of incapacity.

Section 6. Prohibited elements. A directive may not:

(1) create an entitlement to mental health treatment or other medical treatment;

(2) obligate any health care provider, professional person, health care facility, or insurer to pay the costs associated with the treatment requested;

(3) obligate any health care provider, professional person, or health care facility to be responsible for services outside the scope of services the person or facility normally provides; or

(4) bind any person who is not a provider of health care services to confer any benefit on the principal.

Section 7. When a directive takes effect — determination of incapacity. (1) A directive is valid upon execution but takes effect only upon a determination of incapacity as provided in [sections 1 through 20].

(2) A principal, agent, professional person, or health care provider may seek a determination regarding whether the principal is incapacitated or has regained capacity.

(3) For the purpose of triggering the directive, a determination that the principal lacks capacity or has regained capacity must be made by the supervising health care provider.

(4) For the purpose of triggering the directive, a directive may require the concurrence of two health care providers, one of whom must be the supervising health care provider in the determination of incapacity. The directive may require that one of the concurring providers is a psychiatrist or other physician.

(5) The determination of incapacity must consider all factors identified in the directive as evidence of incapacity.

(6) Unless otherwise specified in the directive, the authority of an agent becomes effective upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has regained capacity.

Section 8. Provider of mental health services. (1) A provider of mental health services or a supervising health care provider shall:

(a) inquire whether a directive exists and make a written record of the response; and

(b) include a copy of the directive and any written revocation in the health care record if the directive or revocation are provided.

(2) A supervising health care provider who makes or is informed of a determination that a principal lacks or has regained capacity or that another condition exists that affects an individual instruction or the authority of an agent shall promptly record the determination or condition in the principal's health care record and communicate the determination or condition to the principal, if possible, and to any person or agent authorized to make health care decisions for the patient.

(3) After a determination of incapacity a supervising health care provider shall communicate health care decisions to the principal to the extent possible.

(4) A health care provider or institution providing care to the principal under the authority of a directive shall comply with the provisions of the

directive and with all reasonable interpretations of the directive by the agent to the fullest extent possible unless the supervising health care provider determines that:

(a) compliance violates the accepted standard of care;

(b) compliance conflicts with the applicable law or a court order;

(c) the requested treatment is not reasonably available; or

(d) an emergency situation exists and compliance endangers the principal's life or health.

(5) A health care provider or mental health professional may not require or prohibit the execution or revocation of a directive as a condition for providing health care. A health care provider's inability to follow the specific terms of the directive because it violates the standard of care does not require a revocation of the directive. A health care provider or mental health professional may not promote the creation, alteration, adoption, or revocation of a directive under circumstances that are or reasonably appear to be coercive.

Section 9. Duties of agent. (1) An agent shall act in good faith.

(2) An agent shall make health care decisions in accordance with the principal's written instructions or directive if any. When the agent must make decisions not addressed by the written instructions or directive, the agent shall base decisions on the principal's known wishes and upon the agent's best judgment about how the principal would decide based on the principal's own values and experience.

(3) An agent may resign by giving written notice to the principal. If the directive is in effect at the time of the resignation, the agent may resign by giving written notice to the supervising health care provider.

Section 10. Health care decisions in event of the principal's protest. An agent may make a health care decision over the protest of a principal who lacks capacity if:

(1) the directive is irrevocable at times of incapacity;

(2) the directive authorizes the agent to make the health care decision at issue; and

(3) the health care that is to be provided, continued, withheld, or withdrawn is determined and documented by the supervising health care provider to be medically appropriate and is otherwise permitted by law.

Section 11. Explicit authorization required for certain treatment. Electroconvulsive therapy or surgical or experimental treatment may be provided to a principal after a determination of incapacity only if the directive explicitly consents to the particular therapy or treatment.

Section 12. Authorization for admission to inpatient treatment — effect of directive. (1) A principal whose directive is irrevocable during a period of incapacity and who has provided consent to inpatient treatment in the directive or authorized an agent to consent to inpatient treatment may be admitted to inpatient mental health treatment if:

(a) a physician or psychiatric advanced practice registered nurse performs an evaluation of the principal, including consideration of history, diagnosis, and treatment needs and makes a written determination that the principal needs further inpatient evaluation or treatment that cannot be provided in a less restrictive setting; and

(b) the agent, if any, provides written consent.

(2) The directive may provide limited consent to inpatient treatment, including limitations upon the length of time for each period of hospitalization and limitations on the facility or facilities to which the principal consents to be admitted.

Section 13. Expiration. A directive is valid indefinitely unless the directive includes an expiration date. A directive that expires during a period of incapacity of the principal remains in effect until the principal's capacity is restored.

Section 14. Revocation. (1) The principal may revoke a directive in whole or in part orally or in writing at any time unless the directive provides that:

(a) the directive is not revocable during a period of incapacity; or

(b) the directive is not revocable for a specified period of time after a determination of incapacity.

(2) As allowed by the terms of the directive, the principal may:

(a) revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider; and

(b) revoke other parts of a directive other than the designation of an agent at any time and in any manner that communicates an intent to revoke.

(3) A health care provider, agent, guardian, or conservator who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution where the patient is receiving care.

(4) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the directive or in a durable power of attorney.

(5) A directive revokes all prior directives unless the newest directive instructs otherwise.

Section 15. Effect of directive on existing law. (1) A directive does not override other provisions of law including Title 46, chapter 14, Title 53, chapter 21, part 1, and Title 72, chapter 5.

(2) A directive has no legal effect during a period of involuntary inpatient commitment or a period during which a person is subject to a court order for the care, custody, and treatment of the person pursuant to Title 46, chapter 14.

(3) If a principal executes other directives allowed under Montana law, including a living will or other power of attorney, the other directives must be construed as consistent with and may not override the mental health care advance directive.

(4) In addition to a directive executed under [sections 1 through 20], a principal may designate an agent for other medical decisionmaking under 72-5-501 and 72-5-502.

Section 16. Nomination of guardian or conservator. A directive may nominate a guardian or conservator. The court in any guardianship proceeding shall determine whether there is a directive and shall appoint the guardian or conservator nominated in the directive, except when good cause or reason for disqualification exists.

Section 17. Decisions by guardian or conservator. When a valid directive is in existence at the time of a judicial determination of incapacity and appointment of a guardian or conservator of the principal:

(1) a guardian or conservator shall comply with the instructions in a principal's directive and may not revoke the principal's directive unless the appointing court provides authorization; and

(2) absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian or conservator.

Section 18. Health care information. Unless otherwise specified in the directive, the agent has the same rights as the principal to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information during a period of time when the agent is legally authorized to act on behalf of the principal.

Section 19. Immunities. (1) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or discipline for unprofessional conduct for:

(a) complying with a health care decision of an agent who has authority under a directive to make a health care decision for a principal, including a decision to withhold or withdraw health care;

(b) declining to comply with a health care decision of a person claiming to be an agent based on a good faith belief that the person then lacked authority; or

(c) complying with a directive and assuming that the directive was valid when made and has not been revoked or terminated.

(2) A person acting as agent under [sections 1 through 20] is not subject to civil or criminal liability or discipline for unprofessional conduct for health care decisions made in good faith.

Section 20. Judicial review. (1) A health care provider, principal, agent, or other interested person may request judicial review of the validity of a directive.

(2) A health care provider, principal, or other interested person may request judicial review of a decision by the agent.

Section 21. Section 72-5-402, MCA, is amended to read:

"72-5-402. Contents of petition. (1) The petition must set forth to the extent known:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the person to be protected;

(c) the name and address of that person's guardian, if any;

(d) the name and address of that person's nearest relative known to the petitioner;

(e) a general statement of that person's property with an estimate of the value of the property, including any compensation, insurance, pension, or allowance to which the person is entitled; and

(f) the reason why appointment of a conservator or other protective order is necessary.

(2) If the appointment of a conservator is requested, the petition also must set forth the name and address of the person whose appointment is sought and the basis of the person's priority for appointment.

(3) The petition must affirm that no mental health care advance directive exists or, if a directive exists, the directive must be attached to the petition."

Section 22. Repealer. The following section of the Montana Code Annotated is repealed:

53-21-153. Mental health advance directive authorized — content — cause of action created — definitions.

Section 23. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 1 through 20].

Approved May 6, 2011

CHAPTER NO. 330

[HB 525]

AN ACT PROVIDING FOR SYSTEMATIC REVIEW OF PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS TO DETERMINE IF THE BOARD REMAINS NECESSARY FOR A PUBLIC PURPOSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Review of licensing boards — termination. (1) (a) The interim committee responsible for monitoring professional and occupational licensing boards shall in each interim review one-half of the licensing boards to determine whether the boards remain necessary for a public purpose and meet the criteria in subsection (2). A board that does not meet the criteria may be referred to the next legislature to be terminated on June 30 following the legislative session.

(b) The review in the first interim after [the effective date of this act] must start with the oldest established boards. The review in the second interim after [the effective date of this act] must include the remaining boards. This review process must be repeated in the subsequent two interims.

(2) The criteria to be used to determine if a board meets a public purpose includes information describing whether:

(a) the unregulated practice of the occupation or profession creates a direct, immediate hazard to the public health, safety, or welfare;

(b) the scope of practice is readily identifiable and distinguishable from the scope of practice of other professions and occupations;

(c) the occupation or profession requires a specialized skill or training for which nationally recognized standards of education and training exist;

(d) qualifications for licensure are justified;

(e) a public benefit is provided by licensure;

(f) licensure significantly increases the cost of service to the public; and

(g) public support exists for licensure.

(3) After a presentation and public comment during the review before the interim committee, the interim committee shall report to the legislature convening in the next odd-numbered year which boards, if any, fail to meet a majority of the criteria in subsection (2) and may recommend termination. The recommendation also must include information from the department of labor and industry regarding the board's ability to remain solvent or achieve fiscal solvency as provided in 37-1-101.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Termination. [This act] terminates December 31, 2018.

Approved May 5, 2011

CHAPTER NO. 331

[HB 530]

AN ACT ALLOWING ELECTION JUDGES TO BEGIN PREPARING ABSENTEE BALLOTS BEFORE ELECTION DAY; REQUIRING THE SECRETARY OF STATE TO ADOPT RULES GOVERNING SECURITY OF BALLOTS AND SECRECY OF VOTES; AND AMENDING SECTION 13-13-241, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-241, MCA, is amended to read:

"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots — *rulemaking*. (1) (a) After an absentee ballot is received, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, the election administrator

shall notify the elector, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.

(6) The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.

(7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107.

(8) *(a)* After receiving an absentee ballot secrecy envelope~~, without opening the secrecy envelope~~ *but not sooner than 1 business day before election day*, the election judges ~~shall~~ *may, in the presence of a poll watcher,* ~~on election day~~ *open the secrecy envelope and* place the ~~secrecy envelope~~ *ballot* in the proper*, secured* ballot box *until tabulation occurs on election day*.

(b) The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:

(i) the allowable distance from the observers to the judges and ballots;

(ii) the security in the observation area;

(iii) secrecy of votes during the preparation of the ballots; and

(iv) security of the secured ballot boxes in storage until tabulation procedures begin on election day."

Section 2. Coordination instruction. If both House Bill No. 99 and [this act] are passed and approved, then the sections amending 13-13-241 are void and 13-13-241 must be amended as follows:

"13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots — *rulemaking*. (1) (a) ~~After an absentee ballot is received~~ *Upon receipt of each absentee ballot signature envelope*, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request with the signature on the ~~absentee ballot~~ return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector ~~by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot~~ *as provided in [section 7 of House Bill No. 99]*.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form *or if there is no signature on the absentee ballot return envelope*, the election administrator shall notify the elector~~, either by first-class mail or the most expedient method available under rules adopted by the secretary of state, and inform the elector that the elector may verify the signature, after proof of identification, by mail or in person at the election administrator's office prior to 8 p.m. on election day.~~

~~(6) The elector may verify the signature by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature or by filing a new agent designation form.~~

~~(7) If an elector notified pursuant to subsection (5) fails to verify the signature before 8 p.m. on election day, the ballot must be handled as a provisional ballot under 13-15-107~~ *as provided in [section 7 of House Bill No. 99].*

(6) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in [section 7 of House Bill No. 99].

~~(8)~~*(7) (a)* After receiving an absentee ballot secrecy envelope~~, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box~~ *and if the validity of the ballot is confirmed pursuant to [section 7 of House Bill No. 99], then, no sooner than 1 business day before election day, the election official may, in the presence of a poll watcher, open the secrecy envelope and place the ballot in the proper, secured ballot box until tabulation occurs on election day*.

(b) The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:

(i) the allowable distance from the observers to the judges and ballots;

(ii) the security in the observation area;

(iii) secrecy of votes during the preparation of the ballots; and

(iv) security of the secured ballot boxes in storage until tabulation procedures begin on election day."

Approved May 5, 2011

CHAPTER NO. 332

[HB 533]

AN ACT GENERALLY REVISING STATE LAND MINE LEASING LAWS; CLARIFYING LIMITATIONS ON LEASING; CLARIFYING THE LEASING PROCEDURES FOR COAL MINING LEASES; ALLOWING THE BOARD OF LAND COMMISSIONERS THE DISCRETION IN DEMANDING A SURETY BOND; PROVIDING AN EXCEPTION TO THE DURATION OF A LEASE IF THE LEASE OR PERMIT IS CHALLENGED; DEFINING CERTAIN TERMS; ESTABLISHING TEMPORARY REPORTING REQUIREMENTS; CLARIFYING RENTAL TERMS; AMENDING SECTIONS 77-3-305, 77-3-312, 77-3-313, 77-3-314, AND 77-3-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Legislature of the State of Montana recognizes the importance of the systematic and orderly development of coal mining operations and the need to ensure that fair market value is realized in the leasing of state coal reserves; and

WHEREAS, the Legislature desires to streamline the leasing process and to ensure that existing terms are construed in a manner consistent with original legislative intent.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-3-305, MCA, is amended to read:

"77-3-305. Limitations on leasing. *(1)* The board ~~shall~~ *may* not issue leases~~:~~

~~(1)~~ to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless ~~such~~ *that* country provides for similar or like privileges to citizens of the United States.~~; or~~

(2) ~~if, after a determination of the amount, location, and quality of the coal on the lands for lease,~~ *The board shall consider whether* the extraction of the coal from ~~such~~ *those* lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from ~~such~~ *those* operations on ~~such~~ *those* lands in the future."

Section 2. Section 77-3-312, MCA, is amended to read:

"77-3-312. Leasing procedures. *(1) (a)* Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on ~~such~~ *the* evaluation.

(b) (i) The board may determine fair market value by competitive bid or through an appraisal.

(ii) If no competitive bids are offered on the coal and land to be leased, the board may enter into a lease that is at least at the full market value as determined by the appraisal pursuant to subsection (1)(b)(i).

(2) ~~Leases shall~~ *Except as provided in subsection (1)(b), leases must* be awarded by a competitive bid system, including a bonus bid for the first year's rental *that may be amortized for a period of up to 5 years at the discretion of the board*, and ~~no~~ *a* lease ~~shall~~ *may not* be awarded at less than fair market value."

Section 3. Section 77-3-313, MCA, is amended to read:

"77-3-313. Bond requirements. The board ~~shall~~ *may* also demand a surety company bond in ~~such~~ *a* form and *in an* amount as it may determine,

conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease~~; but~~. *However,* a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit ~~hereinbefore provided for to such~~ *provided for under this part in* an amount ~~as will~~ *that* in the judgment of the board ~~make~~ *makes* the furnishing of a bond unnecessary."

Section 4. Section 77-3-314, MCA, is amended to read:

"77-3-314. Duration of lease. (1) *(a)* ~~Coal~~ *Except as provided in subsection (1)(b), coal* mining leases ~~shall~~ *must* be issued for a primary term of 10 years and ~~so~~ *for as* long thereafter as coal is produced from ~~such~~ lands in commercial quantities.

(b) If a lease under this part or a corresponding permit issued pursuant to Title 82, chapter 4, parts 1 and 2, is challenged before an administrative agency or in court, the primary term of the lease must be extended for the period of time that the lease or permit was subject to challenge.

(2) A lease not producing coal in commercial quantities at the end of the primary term ~~shall~~ *must* be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine-site location permit under 82-4-122 prior to the end of the primary term, and the lease ~~shall~~ *may* not be terminated so long as ~~said~~ *the* lands are covered and described under valid permit.

(3) For the purpose of this part~~,~~*:*

(a) "commercial quantities" means that quantity of coal ~~which~~ *that* can be sold at profit in the commercial market*;*

(b) "covered and described" under a valid permit or "described" in a strip mine or mine-site location permit mean that the leased lands or a portion of the leased lands within or outside of the boundaries of the permit area are expected to be affected or disturbed at some point during the life of the permittee's strip-mining or underground-mining operation and are identified in the permittee's permit application."

Section 5. Section 77-3-316, MCA, is amended to read:

"77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases ~~shall~~ *must* be upon a rental and royalty basis and ~~shall~~ *must* be fixed and determined by the board.

(2) The rental and royalty terms of each lease ~~shall~~ *must* be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental ~~shall~~ *may* be on a ~~per acre~~ *per-acre* basis *or per-ton basis* but ~~in no case shall it~~ *the rental may not* be less than $2 per acre.

(4) *(a)* The amount of ~~such~~ *the* royalty ~~shall~~ *must* be based upon*:*

(i) the kind, grade, and character of the coal in each particular mine;

(ii) ~~upon~~ the size, shape, and nature of the coal vein, strata, or body; and

(iii) ~~upon~~ the shipping and marketing facilities for the product.

(b) Consideration ~~shall~~ *must* also be given to every other known factor affecting the value of each particular coal mining lease~~;~~*,* but ~~in no case shall~~ the royalty for the coal mined *may not* be less than 10% of the f.o.b. mine price of a ton prepared for shipment."

Section 6. Reporting requirements. (1) On or before September 1, 2011, January 1, 2012, April 1, 2012, June 1, 2012, September 1, 2012, and January 1,

2013, the department of labor and industry shall report on the number of jobs that have been created in Montana as a result of passage of [this act] to:

(a) the governor's office of economic development; and

(b) the environmental quality council.

(2) If requested, the governor's office of economic development shall assist the department of labor and industry in preparing the report.

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Applicability. [This act] applies to coal mining leases in effect on [the effective date of this act] and to all coal mining leases entered into on or after [the effective date of this act].

Approved May 6, 2011

CHAPTER NO. 333

[HB 543]

AN ACT REVISING THE LAW RELATING TO THE ADOPTION OF MATERIAL BY REFERENCE IN ADMINISTRATIVE RULES BY AGENCIES SUBJECT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 2-4-307, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-307, MCA, is amended to read:

"2-4-307. Omissions from ARM or register. (1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if*:*

(a) the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient*; and*

(b) it is reasonable for the agency to adopt the model code, rule, or other publication for the state of Montana.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

(3) (a) The model code, rule, or other publication to be adopted by an agency pursuant to subsection (1):

(i) must be in existence at the time that the agency's notice of proposed rulemaking is published in the register;

(ii) must be available to the public for comment, through either publication in the register or publication in an electronic format on the agency's web page, during the time that the rule adopting the model code, rule, or other publication is itself subject to public comment; and

(iii) except as provided in subsection (3)(b), may not be altered between the time of publication of the notice of proposed rulemaking and the publication of the notice of adoption by the agency proposing the rule unless the alteration is required in order to respond to comments in the rulemaking record of the adopting agency.

(b) If the model code, rule, or other publication is altered by the agency between the time of the publication of the notice of proposed rulemaking and the notice of adoption, the part of the model code, rule, or other publication that is altered by the agency is not adopted unless that part is also subject to a separate process of adoption as provided in this section.

(c) If the model code, rule, or other publication is made available on the agency's website, the website may provide either the full text of the model code, rule, or other publication or a link to the source of the official electronic text of the model code, rule, or other publication.

~~(3)~~*(4)* A rule originally adopting by reference any model code or rule provided for in subsection (1) may not adopt any later amendments or editions of the material adopted. Except as provided in subsection ~~(5)~~ *(6)*, each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

~~(4)~~*(5)* If requested by a three-fourths vote of the appropriate administrative rule review committee, an agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed rulemaking.

~~(5)~~*(6)* Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed in the register. This notice must contain the information required by subsection (2) and must state the effective date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding, in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. Further notice of adoption or preparation of a replacement page for the ARM is not required.

~~(6)~~*(7)* If a hearing is requested under subsection ~~(5)~~ *(6)*, the petition for hearing must contain a request for an amendment and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule."

Section 2. Applicability. [This act] applies to rules proposed by an agency, as defined in 2-4-102, on or after October 1, 2011.

Approved May 6, 2011

CHAPTER NO. 334

[HB 559]

AN ACT PROVIDING THAT SMALL AND SEASONAL ESTABLISHMENTS SUCH AS GUEST RANCHES AND OUTFITTING AND GUIDE FACILITIES ARE SUBJECT TO VOLUNTARY GUIDELINES ADDRESSING BASIC HEALTH STANDARDS RATHER THAN REGULATIONS; CLARIFYING THE METHOD OF ESTABLISHING THE AVERAGE NUMBER OF GUESTS

PER DAY FOR SEASONAL AND SMALL ESTABLISHMENTS; CLARIFYING THAT LOCAL GOVERNMENTS MAY ADOPT ORDINANCES ADDRESSING BASIC HEALTH STANDARDS; AND AMENDING SECTIONS 50-51-101, 50-51-102, 50-51-103, 50-51-201, AND 50-51-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-51-101, MCA, is amended to read:

"50-51-101. Findings and purpose of regulation *or guidelines.* (1) It is found that the *welfare of the* public ~~welfare requires control and regulation of~~ *is benefited by regulation or voluntary guidelines for* the operation of establishments providing lodging space accommodations and ~~the control, inspection, and regulation of~~ *for* persons providing accommodations in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found that the regulation of *or application of voluntary guidelines to* establishments providing lodging space accommodations is in the interest of social well-being and the health and safety of the state and all of its people.

(2) The legislature recognizes that there is a wide disparity in the type of establishments, especially in the size, the time of year at which the establishments operate, and the ability of small establishments with few employees and a limited operating season to conform to the same standards to which larger establishments are required to conform. These factors must be considered, especially in the operation of small or seasonal businesses that are such an important part of Montana's tourism business. For these reasons, the legislature believes that department ~~rules~~ *actions* must be tailored to properly and reasonably address differences in the size, location, purpose, and time of year of operation of certain small or seasonal establishments. The legislature believes that ~~rules governing certain small or seasonal establishments must be limited to requirements meant to ensure~~ *guidelines to assist these small and seasonal establishments with addressing basic health standards are appropriate, rather than regulations. The guidelines should be voluntary and address* basic health standards and should not detract from the rustic, out-of-doors experience offered by many guest ranches and outfitter and guide facilities and desired by many tourists. *The legislature is also aware that most of these small and seasonal establishments such as guest ranches and outfitting and guide facilities have not been subject to department regulation. While voluntary guidance from the department on basic public health concerns may benefit these establishments, regulation is not warranted.*"

Section 2. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

(4) "Guest ranch" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides hunting, horseback riding, fishing, or a working cattle ranch experience to its guests; and

(d) is a small establishment or a seasonal establishment.

(5) "Hotel" or "motel" includes:

(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, or public lodginghouse;

(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(6) "Outfitting and guide facility" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101; and

(d) is a small establishment or a seasonal establishment.

(7) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a bed and breakfast, hotel, motel, boardinghouse, tourist home, guest ranch, outfitting and guide facility, or roominghouse.

(8) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(9) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to between 9 and 40 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment ~~operated~~ *was open for the purpose of accommodating guests* as a guest ranch or outfitting and guide facility during the year.

(10) "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to between 9 and 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment ~~operated~~ *was open for the purpose of accommodating guests* as a guest ranch or outfitting and guide facility during the year.

(11) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

(12) "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 3. Section 50-51-103, MCA, is amended to read:

"50-51-103. Department authorized to adopt rules *or guidelines*. (1) The department may adopt rules governing the operation of bed and breakfasts,

hotels, motels, roominghouses, boardinghouses, and tourist homes to protect the public health and safety.

(2) Rules applicable to a bed and breakfast, hotel, motel, roominghouse, boardinghouse, or tourist home may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision, fire and life safety, food service, staggered license expiration dates, and reimbursement of local governments for inspections and enforcement.

(3) The department ~~shall~~ *may not adopt rules governing guest ranches and outfitting and guide facilities that meet the definitions in 50-51-102 but may* adopt ~~rules~~ *voluntary guidelines for these facilities* ~~governing guest ranches and outfitting and guide facilities~~. The *guidelines* ~~rules~~ must take into consideration the size, type, location, and seasonal operations of an establishment and may include only ~~rules~~ *guidelines* to:

(a) ~~ensure~~ *address* that the establishment has safe drinking water and an adequate water supply;

(b) ensure an adequate and sanitary sewage system and ensure adequate and sanitary refuse collection and disposal; *and*

(c) address food safety concerns, such as adequate storage, refrigeration, and food handling~~;~~. ~~and~~

~~(d) establish staggered license expiration dates by implementing an initial licensing period determined by the department.~~

(4) ~~Rules adopted to implement subsection (3) must be adopted through negotiated rulemaking pursuant to the Montana Negotiated Rulemaking Act.~~ *These guidelines must be developed through a negotiated process in cooperation with guest ranches and outfitters and guides. These guidelines are not intended to be regulatory in nature.*

(5) The department shall develop guidelines for county sanitarians to ~~ensure the uniform application of rules statewide. The guidelines must be relative to each type of establishment~~ *provide assistance to guest ranches and outfitters and guides, and the guidelines must be tailored to the needs of each type of establishment*.

~~(6) Upon receiving an application for licensure, the department shall timely provide the applicant with a copy of the rules appropriate for the applicant's type of establishment.~~

(6) As provided in 7-1-113, nothing in this section prohibits a local government from adopting an ordinance that:

(a) is the same as or more stringent than rules adopted by the department under this section; or

(b) differs from the voluntary guidelines adopted by the department under this section."

Section 4. Section 50-51-201, MCA, is amended to read:

"50-51-201. License required. (1) Except as provided in subsection (2), a person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the department.

(2) A guest ranch or an outfitting and guide facility that ~~does not meet~~ *meets* the definitions in 50-51-102 ~~and that provides accommodations to fewer than nine people during each day of operation~~ is not required to obtain a license under subsection (1).

~~(3) Guest ranches and outfitting and guide facilities need not apply for a license pursuant to this chapter for the first time until the later of:~~

~~(a) the completion of negotiated rulemaking and public notification by the department of the necessity for those guest ranches or outfitting and guide facilities to obtain a license pursuant to this chapter; or~~

~~(b) July 1, 1998.~~

~~(4)~~*(3)* A separate license is required for each establishment. However, when more than one type of establishment is operated on the same premises and under the same management, only one license is required that must enumerate on the certificate the types of establishments licensed.

~~(5)~~*(4)* Before a license may be issued by the department, it must be validated by the local health officer or, if there is no local health officer, the sanitarian, in the county where the establishment is located."

Section 5. Section 50-51-401, MCA, is amended to read:

"50-51-401. Civil penalties — injunctions not barred. (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

~~(2) Penalties may not be assessed against a guest ranch or outfitter and guide facility unless the guest ranch or outfitting and guide facility receives a written notice of a violation and fails to correct the violation within 30 days.~~

~~(3)~~*(2)* Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter."

Approved May 6, 2011

CHAPTER NO. 335

[HB 587]

AN ACT PROVIDING THE OPTION FOR AN ASSOCIATE WATER JUDGE; DEFINING THE DUTIES OF AN ASSOCIATE WATER JUDGE; GRANTING THE ASSOCIATE WATER JUDGE STATEWIDE JURISDICTION; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-1-1001, 3-1-1010, 3-7-221, 3-7-222, 3-7-223, 3-7-224, AND 19-5-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-1001, MCA, is amended to read:

"3-1-1001. Creation, composition, and function of commission. (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge *or associate water judge* pursuant to 3-7-221. The commission is composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively engaged or retired, who are appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from that part of the state that is composed of judicial districts 1 through 5, 9, 11, and 18

through 21 and one from that part of the state that is composed of judicial districts 6 through 8, 10, 12 through 17, and 22, who are appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to election by the chief justice of the supreme court. The election is considered an appointment for the purposes of this part.

(2) Appointments provided for in this section must be made within 30 days of the completion of the preceding terms."

Section 2. Section 3-1-1010, MCA, is amended to read:

"3-1-1010. Lists submitted to governor and chief justice — report on proceedings. (1) If a supreme court justice, a district court judge, the workers' compensation judge, *the associate water judge,* or the chief water judge gives notice of the judge's resignation to take effect on a specific date, the commission shall meet as soon as possible after the justice's or judge's proposed resignation date has been verified by the chief justice of the supreme court. If notice is not given, the commission shall meet as soon as possible after a vacancy occurs. The meeting must be held in compliance with 3-1-1007. The commission shall submit to the governor or chief justice, within the time period established under 3-1-1007, a list of not less than three or more than five nominees for appointment to the vacant position.

(2) The list must be accompanied by a written report indicating the vote on each nominee, the content of the application submitted by each nominee, letters and public comments received regarding each nominee, and the commission's reasons for recommending each nominee for appointment. The report must give specific reasons for recommending each nominee."

Section 3. Section 3-7-221, MCA, is amended to read:

"3-7-221. Appointment of chief water judge — term of office. (1) The chief justice of the Montana supreme court shall appoint a chief water judge as provided in Title 3, chapter 1, part 10. *The chief justice of the Montana supreme court may appoint an associate water judge as provided in Title 3, chapter 1, part 10.*

(2) To be eligible for the office of chief water judge *or associate water judge*, a person shall have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana constitution.

(3) The term of office of the chief water judge *and the associate water judge* is ~~from the date of initial appointment until June 30, 1985. After June 30, 1985, the term of office is~~ 4 years, subject to continuation of the water divisions by the legislature."

Section 4. Section 3-7-222, MCA, is amended to read:

"3-7-222. Salary — office space. (1) The chief water judge *and the associate water judge* ~~is entitled to~~ *must* receive the same salary and expense allowance as provided for district judges in 3-5-211.

(2) The office of the chief water judge *and the associate water judge* must be at the location ~~that~~ *designated by* the chief justice of the Montana supreme court ~~shall designate~~. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge *and the associate water judge*~~, which money~~. *Money* may be appropriated by the legislature from the general fund *for these purposes*."

Section 5. Duties of associate water judge. The duties of the associate water judge are the same as those assigned to the chief water judge pursuant to 3-7-223(1) and (2).

Section 6. Section 3-7-223, MCA, is amended to read:

"3-7-223. Duties of the chief water judge. The chief water judge shall:

(1) administer the adjudication of existing water rights by:

(a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;

(b) assuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree;

(c) assuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;

(2) conduct hearings in cases certified to the district court under 85-2-309;

(3) assign court personnel to divisions and duties as needed;

(4) assign the associate water judge to divisions and cases as needed; and

~~(4)~~*(5)* request and secure the transfer of water judges between divisions as needed."

Section 7. Section 3-7-224, MCA, is amended to read:

"3-7-224. Jurisdiction of chief water judge *and associate water judge*. (1) The chief water judge *and the associate water judge* may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge ~~has~~ *and the associate water judge have* jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) ~~With regard to the consideration of a matter within the chief water judge's jurisdiction, the~~ *With regard to the consideration of a matter within the chief water judge's jurisdiction, the* chief water judge ~~has~~ *and the associate water judge have* the same powers as a district court judge. The chief water judge *and the associate water judge* may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including~~,~~ but not limited to~~,~~ requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2)."

Section 8. Section 19-5-301, MCA, is amended to read:

"19-5-301. Membership — inactive vested members — inactive nonvested members. (1) Except for a judge or justice who elected in writing to remain under the public employees' retirement system on or before October 1, 1985, a judge of a district court, a justice of the supreme court, and the chief water judge *or associate water judge* provided for in 3-7-221 must be members of the Montana judges' retirement system.

(2) A judge pro tempore is not eligible for active membership in the retirement system.

(3) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is

an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(4) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 9. Appropriation. There is appropriated $22,000 for each of the fiscal years 2012 and 2013 from the water adjudication account provided for in 85-2-280 to the Montana supreme court for expenses of the office of the associate and chief water judge.

Section 10. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 3, chapter 7, part 2, and the provisions of Title 3, chapter 7, part 2, apply to [section 5].

Section 11. Effective date. [This act] is effective July 1, 2011.

Approved May 5, 2011

CHAPTER NO. 336

[HB 607]

AN ACT REVISING THE PROCEDURE FOR THE SALE OF CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES; ALLOWING AN APPLICANT WHO IS NOT SUCCESSFUL IN A DRAWING FOR A SPECIAL ELK PERMIT TO PURCHASE ONLY THE CLASS B-7 PORTION OF A CLASS B-10 LICENSE AS A CLASS B-11 LICENSE; REQUIRING THE RESALE OF THE REMAINING NONRESIDENT ELK TAG AS AN ELK-ONLY COMBINATION LICENSE; AMENDING SECTION 87-2-511, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-511, MCA, is amended to read:

"87-2-511. (Temporary) Sale and use of Class B-10, Class B-11, and Class B-13 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with a number of authorized Class B-10 and Class B-11 licenses, as determined under 87-1-268, reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

~~(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.~~

~~(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.~~

~~(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:~~

~~(a) accompany the applicant;~~

~~(b) provide guiding services for the species hunted by the applicant;~~

~~(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;~~

~~(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and~~

~~(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.~~

~~(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.~~

~~(6) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.~~

~~(7) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.~~

~~(8) The department shall make the reserved outfitter-sponsored Class B-10 and Class B-11 licenses that remain unsold available as provided in 87-1-268.~~

~~(9) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.~~

~~(10) The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application.~~

87-2-511. ~~(Effective March 1, 2011)~~ Sale and use of Class B-10, Class B-11, and Class B-13 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

(6) (a) An applicant who applies for a Class B-10 license and an applicable special elk permit but who is not successful in a drawing for the special elk permit

may choose to retain only the Class B-7 portion of the Class B-10 license. The department shall sell the Class B-7 portion as a Class B-11 license for the fee set in 87-2-510. The provisions of this subsection (6)(a) do not affect the limits established in 87-2-510(2). The remaining elk tag portion of the Class B-10 license must be sold by the department as an elk-only combination license for a fee that is $150 less than that set for a Class B-10 license in 87-2-505.

(b) The department may charge a $25 processing fee if an applicant chooses to buy only a portion of the Class B-10 license pursuant to subsection (6)(a) after the Class B-10 license has been issued to the applicant.

(c) The revenue collected pursuant to this subsection (6) must be deposited in the state special revenue account to the credit of the department and may not be allocated pursuant to other statutory requirements generally applicable to Class B-10 or Class B-11 licenses.

~~(6)~~*(7)* The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2011

CHAPTER NO. 337

[HB 611]

AN ACT GENERALLY REVISING THE USE OF ACCOUNTS AND FUNDS; REVISING THE ADVANCING AGRICULTURAL EDUCATION IN MONTANA PROGRAM ACCOUNT; REVISING THE USE OF THE RESEARCH AND COMMERCIALIZATION ACCOUNT TO INCLUDE THE DEPARTMENT OF AGRICULTURE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 20-7-334 AND 90-3-1003, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-334, MCA, is amended to read:

"20-7-334. Advancing agricultural education in Montana program account. (1) There is an advancing agricultural education in Montana program account in the state special revenue fund provided for in 17-2-102.

(2) Money in the account *and money appropriated by the legislature for the purpose of this section* must be used by the office of public instruction for addressing the stability of and making improvements to Montana's agricultural education programs. The office of public instruction shall adopt rules to implement the national quality program standards.

(3) (a) Each agricultural education program in the state that completes the national quality program standard evaluation as adopted by rule and submits a plan of improvement to the office of public instruction's agricultural education specialist ~~must~~ *may* receive a ~~one-time~~ payment of $500. *An agricultural education program may not receive more than one payment in a school year.*

(b) Each agricultural education program in the state that submits a detailed budget to increase the quality of its agricultural education program based on the plan of improvement may receive a ~~one-time~~ payment of up to $1,000. *An*

agricultural education program may not receive more than one payment in a school year.

(c) Each school that adds agricultural education to its curriculum and recruits and retains an endorsed agricultural education teacher must receive a one-time payment of up to $7,500.

(d) Program administrators in Bozeman and Helena must receive a total of $11,250 annually for the costs of providing a minimum of one onsite visit each year to each participating school."

Section 2. Section 90-3-1003, MCA, is amended to read:

"90-3-1003. Research and commercialization account — use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research, *development,* and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; ~~or~~

(d) the Montana food and agricultural development program provided for in 80-11-901; or

~~(d)~~*(e)* administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least ~~20%~~ *$195,000* of the account funds ~~approved for research and commercialization projects~~ must be ~~directed~~ *distributed on an annual basis to the department of agriculture to support and administer the Montana food and agricultural development program provided for in 80-11-901* ~~toward projects that enhance production agriculture~~.

(5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.

(b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.

(6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

(7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

(9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

(11) For the purposes of this section:

(a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

(b) "renewable resource research and development" means research and development that would advance:

(i) the use of any of the sources of energy listed in 69-3-2003(10) to produce electricity; and

(ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 9, 2011

CHAPTER NO. 338

[HB 615]

AN ACT REQUIRING THE INSURANCE COMMISSIONER TO STUDY EQUITABLE TREATMENT BY INSURERS FOR CANCER PATIENTS SEEKING TO PARTICIPATE IN CANCER CLINICAL TRIALS; REQUIRING THE INSURANCE COMMISSIONER TO COORDINATE WITH THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE; REQUIRING THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE TO REVIEW THE INSURANCE COMMISSIONER'S FINAL REPORT AND RECOMMEND APPROPRIATE LEGISLATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, there are hundreds of cancer patients in Montana who are eligible to participate in clinical trials that could be beneficial to them, as well as hasten major breakthroughs in cancer treatment; and

WHEREAS, the research companies cover all costs of the clinical trials, but not the routine care (e.g., chemotherapy, etc.) a patient would have received had they not been participating in a clinical trial; and

WHEREAS, cancer patients are not participating in these clinical trials because many insurance plans exclude routine care if a patient is accepted into a clinical trial; and

WHEREAS, insurance companies and self-funded plan administrators report they have difficulty defining routine care when an insured participates in a clinical trial; and

WHEREAS, limited information exists regarding this issue for consumers of health insurance to facilitate their making an informed choice.

Be it enacted by the Legislature of the State of Montana:

Section 1. Commissioner review — cancer clinical trials. Pursuant to 33-1-311, the insurance commissioner shall study the appropriate and equitable treatment of cancer patients eligible for clinical trials by offerors of health insurance coverage in Montana. In carrying out the purposes of this section, the insurance commissioner shall:

(1) convene an advisory committee of representatives of insurance, reinsurance, and self-insurance offerors in Montana, as well as patients, health care advisors, providers, and administrators, that will meet to:

(a) evaluate the causes of the routine care coverage denials or ineligibilities for insureds recommended for participation in cancer clinical trials;

(b) identify necessary federal policy changes to address these issues for purchasers of ERISA-regulated health care plans;

(c) define routine care for cancer patients undergoing clinical trials; and

(d) make findings and recommendations to address issues associated with conclusions in this section;

(2) assess whether violations of Montana statutes are occurring related to this denial of care or ineligibility of coverage and take appropriate action if any are found;

(3) review a selection of other states' policies related to required treatment of cancer routine care coverage for insureds undergoing clinical trials; and

(4) coordinate with the children, families, health, and human services interim committee and summarize and present the findings and recommendations in the form of a final report of the insurance commissioner to the interim committee on or before March 31, 2012.

Section 2. Cancer clinical trials — review by interim committee. (1) The children, families, health, and human services interim committee shall coordinate with the insurance commissioner regarding the requirements of [section 1] and dedicate at least a portion of one meeting during the 2011-2012 interim for consideration of the report prepared by the advisory committee pursuant to [section 1].

(2) The children, families, health, and human services interim committee shall consider whether legislation or other actions are necessary to facilitate equitable treatment of cancer patients in Montana and facilitate participation of Montana and Montana's citizens in cancer clinical trials.

Section 3. Consumer information — coverage of routine patient care for cancer patients participating in cancer clinical trials. A component of any health insurance plan comparative database or system developed by the insurance commissioner must include whether the plan covers routine cancer care if the patient participates in a cancer clinical trial.

Section 4. Termination. [This act] terminates June 30, 2013, or upon completion of the duties described in [sections 1 through 3], whichever occurs first.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 5, 2011

CHAPTER NO. 339

[HB 622]

AN ACT REVISING FUNDING FOR LIVESTOCK LOSS MITIGATION AND CONTROL OF PREDATORY ANIMALS; CREATING STATE SPECIAL REVENUE ACCOUNTS TO REIMBURSE PRODUCERS FOR LIVESTOCK LOSS AND TO PROTECT LIVESTOCK FROM PREDATORY ANIMALS; TRANSFERRING MONEY TO THE ACCOUNTS; CREATING STATUTORY APPROPRIATIONS TO THE DEPARTMENT OF LIVESTOCK SUBJECT TO A TERMINATION DATE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-15-3110, 2-15-3114, 15-1-122, 15-24-925, 17-7-502, 81-1-110, 81-7-103, AND 81-7-104, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Livestock loss reduction and mitigation restricted account. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the livestock loss reduction and mitigation restricted special revenue account. The account is administered by the department.

(2) Money is transferred to the account from the state general fund pursuant to 15-1-122 and is restricted to the purpose of making payments to livestock producers for confirmed and probable livestock losses pursuant to 2-15-3112(2). Money in the account may not be expended for administrative expenses.

(3) The livestock loss reduction and mitigation restricted account is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of making payments to livestock producers as provided in subsection (2) of this section.

Section 2. Predatory animal state special revenue account. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the predatory animal special revenue account. The account is administered by the department.

(2) Money from per capita fees is transferred to the account pursuant to 15-24-925 for the purpose of protecting livestock in the state under the provisions of 81-7-101 through 81-7-104. The department is not required to spend all money allocated to this account by the end of each fiscal year.

(3) The predatory animal special revenue account is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of protecting livestock as provided in subsection (2) of this section.

Section 3. Section 2-15-3110, MCA, is amended to read:

"2-15-3110. Livestock loss reduction and mitigation board — purpose, membership, and qualifications. (1) There is a livestock loss reduction and mitigation board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in 2-15-3111 through 2-15-3113, with funds provided through the accounts established in 81-1-110, in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish, wildlife, and parks commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of 2-15-3110 through 2-15-3114, 81-1-110, ~~and~~ 81-1-111*, and [section 1]*."

Section 4. Section 2-15-3114, MCA, is amended to read:

"2-15-3114. Funding of programs — contingency. The awarding of grants and reimbursements and the performance of duties pursuant to 2-15-3111 through 2-15-3113 are contingent upon the amount of money available in the accounts provided for in 81-1-110*,* ~~and~~ 81-1-111*, and [section 1]*."

Section 5. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of $59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.64% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the

senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(3) The amount of $200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in [section 1] in each fiscal year.

~~(3)~~*(4)* For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

~~(4)~~*(5)* The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes."

Section 6. Section 15-24-925, MCA, is amended to read:

"15-24-925. Reimbursement to department — transmission of fees to state. (1) The department may withhold 2% of the money received under 15-24-921 as reimbursement for the collection of the fee on livestock unless a different percentage of money to be withheld is mutually agreed upon by the department and the department of livestock on an annual basis.

(2) The department shall designate the amount received from the fee imposed on sheep and the amount received from the fee imposed on all other livestock and shall specify the separate amounts in the report to the department of livestock. The money, when received by the department, must be deposited in an account in the special revenue fund to the credit of the department of livestock. The money in the account must be kept separate from other funds received by the department of livestock. Interest earned on money in the account must be deposited in the account.

(3) The amount of $350,000 is transferred from the state special revenue account in subsection (2) to the predatory animal special revenue account provided for in [section 2] in each fiscal year."

Section 7. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314;

10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; *[section 1]; [section 2];* 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 8. Section 81-1-110, MCA, is amended to read:

"81-1-110. Livestock loss reduction and mitigation accounts. (1) There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111, except those *transferred to the account provided for in [section 1] or* appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of 2-15-3111 through 2-15-3113 must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) All federal funds awarded to the state for compensation for wolf depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of 2-15-3112.

(3) The livestock loss reduction and mitigation board may spend funds in the accounts only to carry out the provisions of 2-15-3111 through 2-15-3113."

Section 9. Section 81-7-103, MCA, is amended to read:

"81-7-103. Administration of funds by department. ~~The~~ *Except as provided in [section 2(2)], the* department shall administer and expend for predatory animal control all money that is made available to it, including the money allocated for this purpose under 81-7-104 and all money that is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means responsive to the necessities of control in various areas of the state, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department at those times of the year it considers advisable."

Section 10. Section 81-7-104, MCA, is amended to read:

"81-7-104. Predator control money — use of proceeds. (1) ~~The~~ *In addition to the transfer provided for in 15-24-925, the* department shall allocate a portion of the money from the fee under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by predatory animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction and control, including systematic hunting and trapping and payment of bounties.

(2) Money may be paid out only on claims presented to the department and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures for predatory animal control by methods other than payment of bounties, as determined by the department. Money designated for predator control must be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction and control of predatory animals, as determined by the department and its advisory committee. Claims may not be approved in excess of money available for that purpose, and warrants may not be registered against the money."

Section 11. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 81, chapter 1, part 1, and the provisions of Title 81, chapter 1, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 81, chapter 7, part 1, and the provisions of Title 81, chapter 7, part 1, apply to [section 2].

Section 12. Effective date. [This act] is effective July 1, 2011.

Section 13. Termination. [Sections 1(3), 2(3), and 7] terminate June 30, 2017.

Approved May 5, 2011

CHAPTER NO. 340

[SB 11]

AN ACT REDUCING THE WITHHOLDING TAX RATE ON THE PROCEEDS FROM LOTTERY WINNINGS; AMENDING SECTION 15-30-2522, MCA; AND PROVIDING AN EFFECTIVE DATE .

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-2522, MCA, is amended to read:

"15-30-2522. Withholding of lottery winnings. (1) When making any payment of winnings that are subject to withholding, the state lottery commission, created under Title 23, chapter 7, part 2, shall deduct and withhold from the payment a tax in an amount equal to ~~10%~~ *6.9%* of the payment.

(2) For the purposes of this section, the phrase "winnings that are subject to withholding" means the proceeds in excess of $5,000 won from a lottery game operated pursuant to Title 23, chapter 7.

(3) Every person who receives a payment of winnings that are subject to withholding shall furnish the state lottery commission with a signed statement containing the name, address, and taxpayer identification number of the recipient and of every person entitled to any portion of the payment. The signed statement must be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing."

Section 2. Effective date. [This act] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 341

[SB 126]

AN ACT REVISING THE LICENSING REQUIREMENTS AND FEES FOR FIRMS, NURSERIES, PLANT DEALERS, AND SMALL PLANT VENDORS THAT SELL OR DISTRIBUTE NURSERY STOCK; PROVIDING FOR RECIPROCAL LICENSURE; EXEMPTING CERTAIN FIRMS, NURSERIES, PLANT DEALERS, AND SMALL PLANT VENDORS FROM LICENSURE; IMPOSING A FEE FOR CERTAIN PLANT INSPECTIONS; REQUIRING THE DEPARTMENT OF AGRICULTURE TO ADOPT RULES; REQUIRING THE DEPARTMENT OF AGRICULTURE TO INCLUDE THE ACTUAL COSTS OF INSPECTION, SURVEYS, AND OTHER SERVICES IN THE FEE FOR CERTAIN PLANT INSPECTIONS; ESTABLISHING A MINIMUM AND MAXIMUM HOURLY FEE FOR INSPECTIONS; AMENDING SECTIONS 80-7-106 AND 80-7-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-106, MCA, is amended to read:

"80-7-106. License required — application and payment of license fee — exemption. (1) *(a)* ~~A~~ *Except as provided in subsection (1)(b), a* firm, nursery, ~~or~~ plant dealer*, or small plant vendor* engaging in the business of selling or distributing nursery stock in this state shall obtain a license from the department. If the firm, nursery, ~~or~~ plant dealer*, or small plant vendor is required to be licensed and* sells or distributes nursery stock ~~at more than one location, the firm, nursery, or plant dealer shall obtain:~~

~~(a) one license if its combined annual gross sales are less than $10,000; and~~

~~(b) a license for each location if its gross annual sales are $10,000 or more~~*, the firm, nursery, plant dealer, or small plant vendor shall obtain a license for each taxpayer identification number the firm, nursery, plant dealer, or small plant vendor uses when selling or distributing nursery stock*.

(b) A firm, nursery, plant dealer, or small plant vendor is not required to obtain a license in Montana if the firm, nursery, plant dealer, or small plant vendor:

(i) is licensed as a nursery in another state and the state in which the firm, nursery, plant dealer, or small plant vendor is licensed grants nonresident licenses to residents of this state on the same basis; or

(ii) operates only in Montana and has less than $1,000 in gross annual sales of nursery stock.

(2) The license must be in the name of the firm, nursery, ~~or~~ plant dealer*, or small plant vendor* seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

~~(3) A small plant vendor must be licensed but is exempt from the license fee requirements of this section.~~

~~(4)~~*(3)* (a) A firm, nursery, ~~or~~ plant dealer*, or small plant vendor* that earns *at least $1,000 but* less than ~~$1,000~~ *$5,000* in gross annual sales of nursery stock ~~must be licensed but is exempt from licensing fees.~~

~~(b) A firm, nursery, or plant dealer that earns $1,000 but less than $3,000 in gross annual sales of nursery stock~~ shall pay a license fee of ~~$50~~ *$25.*

~~(c)~~*(b)* A firm, nursery, ~~or~~ plant dealer*, or small plant vendor* that earns ~~$3,000 but less than $10,000~~ *$5,000 or more* in gross annual sales of nursery stock shall pay a license fee of ~~$125~~ *$100.*

~~(d) A firm, nursery, or plant dealer that earns $10,000 or more in gross annual sales of nursery stock shall pay a license fee of $160.~~

~~(5)~~*(4)* The department may seek verification from the department of revenue as to whether *a firm, nursery, plant dealer, or small plant vendor has met* the income thresholds established in this section ~~have been met~~.

~~(6)~~*(5)* A new applicant or a firm, nursery, ~~or~~ plant dealer*, or small plant vendor* failing to renew a license on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable late fee of $25 for each license.

~~(7)~~*(6)* The fees required by ~~the provisions of~~ this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party."

Section 2. Section 80-7-108, MCA, is amended to read:

"80-7-108. Nursery stock inspection — fees. (1) The department*:*

(a) may enter the premises of a licensed firm, nursery, ~~or~~ plant dealer*,* or ~~of a~~ small plant vendor during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance*. ~~An inspection fee may not be assessed if the department requests the inspection.~~; and*

(b) shall, pursuant to rules promulgated by the department, determine the schedule, the need for inspections based on complaints received and the department's assessment of risk to the state from potential plant pests, and the expected amount of time for the inspections.

(2) A firm, nursery, plant dealer, or small plant vendor may request the inspection of nursery stock, plants, or other materials by giving the department 5 days' notice prior to the time when the nursery stock, plants, or other materials are ready for inspection. ~~A firm, nursery, plant dealer, or small plant vendor requesting an inspection shall pay a fee as established by department rule.~~ The ~~fee~~ *firm, nursery, plant dealer, or small plant vendor shall pay a fee to*

the department for an inspection conducted pursuant to this section. The fee must cover the actual costs of inspection, surveys, and other services ~~required to issue the plant inspection certificate~~ *performed by the department and may not be less than $42 per hour or more than $50 per hour as established by department rule*.

(3) The department may issue a plant inspection certificate based on the results of a nursery stock or other plant inspection or inspection survey."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2011

CHAPTER NO. 342

[SB 132]

AN ACT PROVIDING THAT A LICENSED AUDIOLOGIST SELLING, DISPENSING, OR FITTING HEARING AIDS IS NOT SUBJECT TO LICENSURE AS A HEARING AID DISPENSER; GRANTING RULEMAKING AUTHORITY TO THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; AND AMENDING SECTIONS 37-15-102, 37-15-103, 37-16-103, 37-16-401, AND 37-16-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-15-102, MCA, is amended to read:

"37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Association" means the Montana speech-language and hearing association.

(2) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(3) "Audiology aide or assistant" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(4) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1739.

(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) "Practice of audiology" means nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule *and includes the selling, dispensing, and fitting of hearing aids*.

(7) "Practice of speech-language pathology" means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule.

(8) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language

pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

(9) "Speech-language pathology aide or assistant" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist."

Section 2. Section 37-15-103, MCA, is amended to read:

"37-15-103. Exemptions — *rulemaking*. (1) This chapter does not prevent a person licensed in this state under any other law from engaging in the profession or business for which that person is licensed.

(2) This chapter does not restrict or prevent activities of a speech-language pathology or audiology nature or the use of the official title of the position for which the activities were performed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) who are not licensed under this chapter may perform those activities only within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) This chapter does not restrict the activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of a supervised course of study, and a fee may not accrue directly or indirectly to the student. These students must be designated by the title "speech-language pathology or audiology intern", "speech-language pathology or audiology trainee", or a title clearly indicating the training status appropriate to the level of training.

(5) This chapter does not restrict a person from another state from offering speech-language pathology or audiology services in this state if the services are performed for not more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations that the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter may offer speech-language pathology or audiology services in this state for not more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) This chapter does not restrict a person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which the person qualifies.

(7) This chapter does not restrict a person who holds a certificate of registration in this state as a hearing aid dealer from performing the functions for which the person qualifies and that are described in Title 37, chapter 16.

(8) *(a)* ~~This chapter does not exempt an~~ *An* audiologist who sells, dispenses, or fits hearing aids *is exempt* from the licensing requirements or other provisions of Title 37, chapter 16*, except for the provisions of 37-16-304*.

(b) The board may adopt rules pertaining to the selling, dispensing, and fitting of hearing aids and hearing aid parts, attachments, and accessories."

Section 3. Section 37-16-103, MCA, is amended to read:

"37-16-103. Exemptions. ~~(1)~~ This chapter does not apply to a person who is*:*

(1) a physician licensed to practice by the state board of medical examiners~~.~~*;*

(2) ~~This chapter does not apply to a person while the person is~~ engaged in the practice of fitting hearing aids if the person's practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency~~.~~*; or*

(3) licensed as an audiologist under the provisions of Title 37, chapter 15, except that the provisions of 37-16-304 apply to licensed audiologists."

Section 4. Section 37-16-401, MCA, is amended to read:

"37-16-401. License required — *exception.* A *Except as provided in 37-16-103, a* person may not engage in selling, dispensing, or fitting hearing aids or display a sign or in any other way advertise the selling, dispensing, or fitting of hearing aids in Montana unless the person holds a current license issued by the department."

Section 5. Section 37-16-405, MCA, is amended to read:

"37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a training period during which the applicant shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing a written notice by certified mail to the board and the trainee.

~~(4) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the training period but is required to pass the examinations prescribed in this chapter.~~

~~(5)~~*(4)* The trainee license terminates 1 year after issuance or after the trainee passes the practical examination, whichever occurs first.

~~(6)~~*(5)* Upon completion of 1,000 hours of supervised training, the trainee is eligible to take the practical examination.

~~(7)~~*(6)* A trainee who does not complete 1,000 hours of supervised training before the trainee license terminates may be issued a second trainee license upon making application and paying the appropriate fee. The hours of training obtained under the first trainee license must be carried forward.

~~(8)~~*(7)* A trainee who fails the practical examination may continue to practice under direct supervision until the trainee license terminates. A second trainee license may not be issued. Termination of the trainee license and cessation of the authority to practice do not preclude a person from retaking the practical examination upon payment of the appropriate fees.

~~(9)~~*(8)* Upon passing the practical examination, a trainee may submit an application for a hearing aid dispenser license with the appropriate fee and a hearing aid dispenser license must be issued.

~~(10)~~*(9)* A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

~~(11)~~*(10)* For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

Approved May 5, 2011

CHAPTER NO. 343

[SB 153]

AN ACT REVISING THE APPOINTMENT OF COUNSEL IN CHILD ABUSE AND NEGLECT CASES; ALLOWING JUDGES DISCRETION IN APPOINTING COUNSEL FOR A CHILD OR YOUTH WHEN A GUARDIAN AD LITEM IS APPOINTED FOR THE CHILD OR YOUTH; AND AMENDING SECTION 41-3-425, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 *when a guardian ad litem is not appointed for the child or youth*; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint or have counsel assigned for*:*

(a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422~~.~~*;*

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) The court's action pursuant to subsection (2) ~~or (3)~~ *or (3)* must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111."

Approved May 6, 2011

CHAPTER NO. 344

[SB 187]

AN ACT GENERALLY REVISING THE MONTANA PUBLIC DEFENDER ACT AND RELATED STATUTES; RESTRICTING AND LIMITING CASELOAD LEVELS FOR THE CHIEF PUBLIC DEFENDER AND DEPUTY PUBLIC DEFENDERS; REQUIRING NOTARIZED AFFIDAVITS OF INDIGENCY; REVISING THE PROVISION FOR PAYMENT BY DEFENDANTS OF PUBLIC DEFENDER SERVICES; AMENDING SECTIONS 2-15-1028, 46-8-101, 46-8-113, 46-8-114, 47-1-102, 47-1-105, 47-1-111, 47-1-202, 47-1-205, 47-1-215, AND 47-1-216, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender commission. (1) There is a public defender commission.

(2) The commission consists of ~~11~~ *11* members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, ~~as follows:~~

~~(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;~~ *as follows:*

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii)~~(ii)~~ one ~~attorney~~ *attorney* experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

~~(iii) one attorney who represents criminal defense lawyers;~~

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house~~.~~*;*

~~(d) one person who is a member of an organization that advocates on behalf of indigent persons;~~

~~(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;~~

~~(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and~~

~~(g) one person who is employed by an organization that provides addictive behavior counseling.~~

~~(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.~~

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) *(a)* The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

~~(a)~~*(i)* the commission *shall hire staff for the commission subject to subsection (6)(b)* and *the* chief public defender shall hire ~~their own~~ *separate* staff *for the office*, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and

~~(b)~~*(ii)* commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection ~~(6)(b)~~ *(6)(a)(ii)* prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-18-113(1)(a) and (1)(b) to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in 47-1-201, a county attorney or a

deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members."

Section 2. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) ~~If~~ *Except as provided in subsection (3), if* the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

Section 3. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment by defendant for assigned counsel — costs to be filed with court. (1) ~~As~~ *Subject to the provisions of subsections (2) and (3), as* part of or as a condition ~~under~~ *of* a sentence *that is* imposed under the provisions of this title, the court shall ~~require~~ *determine whether* a convicted defendant ~~to~~ *should* pay the costs of counsel assigned to represent the defendant as follows~~, except as provided in subsections (2) and (3)~~:

~~(a) in every misdemeanor case, $150; and~~

~~(b) in every felony case, $500.~~

~~(2) Costs must be limited to costs incurred by the office of state public defender, provided for in 47-1-201,~~

(a) If the defendant pleads guilty prior to trial:

(i) to one or more misdemeanor charges and no felony charges, the cost of counsel is $250; or

(ii) to one or more felony charges, the cost of counsel is $800.

(b) If the case goes to trial, the defendant shall pay the costs incurred by the office of state public defender for providing the defendant with counsel in the criminal ~~proceeding~~ *trial*. ~~If the criminal proceeding includes a jury trial, counsel assigned by the~~ *The* office of state public defender shall file with the court a statement of the hours spent on the case and the costs and expenses incurred ~~and, except as provided in subsection (3), the court shall require the~~

~~defendant to pay the costs of counsel and other costs and expenses as reflected in the statement~~ *for the trial*.

(2) Any costs imposed pursuant to this section must be paid in accordance with 46-18-251(2)(e).

(3) In any proceeding for the determination of whether a defendant is or will be able to pay the costs of counsel, the court shall question the defendant as to the defendant's ability to pay those costs and shall inform the defendant that purposely false or misleading statements by the defendant may result in criminal charges against the defendant.

~~(3)~~*(4)* The court may not sentence a defendant to pay the costs for assigned counsel unless the defendant is or will be able to pay ~~them~~ *the costs imposed by subsection (1). The court may find that the defendant is able to pay only a portion of the costs assessed*. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

~~(4)~~*(5)* A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(6) Any costs imposed under this section must be included in the court's judgment."

Section 4. Section 46-8-114, MCA, is amended to read:

"46-8-114. Time and method of payment. When a defendant is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the ~~office of state public defender, provided for in 47-1-201,~~ *clerk of the sentencing court for allocation as provided in 46-18-201, 46-18-232, and 46-18-251* and deposited in the account established in 47-1-110."

Section 5. Section 47-1-102, MCA, is amended to read:

"47-1-102. Purpose. The purposes of this chapter are to:

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense;

(2) ensure that the system is free from undue political interference and conflicts of interest;

(3) provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state;

(4) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests; ~~and~~

(5) ensure that adequate public funding of the statewide public defender system is provided and managed in a fiscally responsible manner*; and*

(6) ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients' financial ability to pay."

Section 6. Section 47-1-105, MCA, is amended to read:

"47-1-105. Commission — duties — report — rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

(1) establish the qualifications, duties, and compensation of the chief public defender, as provided in 47-1-201, appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender and the administrative director;

(4) review and approve any proposal to create permanent staff positions;

~~(5) establish policies and procedures for identifying cases in which public defenders may have a conflict of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:

(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(b) all standards established or being considered by the commission or the chief public defender;

(c) the number of deputy public defenders and the region supervised by each;

(d) the number of public defenders employed or contracted with in the system, identified by region;

(e) the number of attorney and nonattorney staff supervised by each deputy public defender;

(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(g) the total number of persons represented by the office, identified by region, court, and case type;

(h) the annual caseload and workload of each public defender, identified by region, court, and case type*, except for the office of chief public defender*;

(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(k) detailed expenditure data by court and case type."

Section 7. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility — determination of indigence — rules. (1) (a) When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant who is eligible for a public defender ~~only~~ because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. *The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.*

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission. *The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.*

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal

poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section."

Section 8. Section 47-1-202, MCA, is amended to read:

"47-1-202. Chief public defender — duties. *(1)* In addition to the duties provided in 47-1-201, the chief public defender shall:

~~(1) act as secretary to the commission and provide administrative staff support to the commission;~~

(a) act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);

~~(2)~~*(b)* assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;

~~(3)~~*(c)* develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;

~~(4) establish processes and procedures to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;~~

~~(5)~~*(d)* establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

~~(6)~~*(e)* establish administrative management procedures for regional offices;

~~(7)~~*(f)* establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case

complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(8)~~*(g)* establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(9)~~*(h)* establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(10)~~*(i)* establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

~~(11) maintain a minimum client caseload, as determined by the commission;~~

~~(12)~~*(j)* actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and

~~(13)~~*(k)* perform all other duties assigned by the commission pursuant to this chapter.

(2) The chief public defender may not maintain a client caseload."

Section 9. Section 47-1-205, MCA, is amended to read:

"47-1-205. Office of appellate defender — chief appellate defender. (1) There is within the office an office of appellate defender. The office of appellate defender must be located in Helena, Montana.

(2) Beginning July 1, 2006, the chief public defender shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender.

(3) The chief appellate defender shall:

(a) manage and supervise all public defender services provided by the office of appellate defender;

(b) ensure that when a court orders the office to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(7)~~*(1)(f)* and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;

(e) contract for services as provided in 47-1-216 and as authorized by the chief public defender according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the appellate defender office and submit records and reports to the chief public defender as requested;

(g) implement standards and procedures established by the commission and the chief public defender for the office of appellate defender;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties assigned to the chief appellate defender by the chief public defender."

Section 10. Section 47-1-215, MCA, is amended to read:

"47-1-215. Regional offices — deputy public defenders — office space. (1) ~~Beginning July 1, 2006, the~~ *The* chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) Each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders the office to assign counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(7)~~*(1)(f)*;

(d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

(e) contract for services as provided in 47-1-216 and authorized by the chief public defender according to the strategic plan approved by the commission;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the chief public defender as requested;

(g) implement the standards and procedures established by the commission and chief public defender for the region;

~~(h) maintain a minimum client caseload as determined by the chief public defender; and~~

(h) maintain a minimum client caseload as determined by the chief public defender; and

~~(i)~~*(i)* perform all other duties as assigned by the chief public defender.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office and may not be considered a county or city obligation."

Section 11. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services — rules. (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

(2) The chief contract manager shall oversee the contracting program and may not maintain a client caseload.

~~(2)~~*(3)* ~~Beginning July 1, 2006, the~~ *The* state office and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. All contracting pursuant to this section is exempt from the Montana Procurement Act, as provided in 18-4-132.

~~(3)~~*(4)* Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

~~(4)~~*(5)* Contracting for public defender services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

~~(5)~~*(6)* The chief public defender and deputy public defenders shall provide for contract oversight and enforcement to ensure compliance with established standards.

~~(6)~~*(7)* The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

(9) The commission shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The commission shall implement rules requiring evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria."

Section 12. Conflicts of interest. (1) The commission shall establish a conflicts office to contract for attorneys to represent indigent defendants in circumstances where, because of conflict of interest, the public defender program is unable to provide representation to a defendant.

(2) The commission shall appoint a conflicts manager to oversee the office. The conflicts manager reports directly to the commission and not to the chief public defender. The conflicts manager may not handle cases.

(3) All attorneys contracted for conflict of interest cases shall report to the conflicts manager.

Section 13. Codification instruction. [Section 12] is intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [section 12].

Section 14. Effective date. [This act] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 345

[SB 215]

AN ACT PROVIDING FOR A REDUCTION IN THE DEPARTMENT OF REVENUE MARKUP ON LIQUOR SOLD BY THE STATE BASED UPON THE PERCENTAGE OF MONTANA-PRODUCED INGREDIENTS USED IN THE PRODUCTION OF THE LIQUOR; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. State liquor markup reduction — Montana-produced ingredients. (1) Based upon the percentage of Montana-produced ingredients that are used in producing a liquor, the department shall reduce the liquor markup charged by the department in determining the wholesale price of the liquor. To qualify for a reduced markup, the liquor must have been manufactured, distilled, rectified, bottled, or processed by a distillery that produces 25,000 proof gallons or less of liquor nationwide annually. The reduction in the markup must be determined as follows:

Percent of Montana-Produced Ingredients	Reduction in Markup
50% to 64%	50%
65% to 74%	75%
75% to 100%	100%

(2) For the purposes of this section, the liquor markup is the standard markup added to the department's base case price used in determining the wholesale price of liquor for products other than fortified wine or sacramental wine and does not include the reduced markup that results from the department's reduced prices for products designated for closeout or inventory reduction. The reduced markup must be applied to the standard liquor markup minus associated agency liquor store commissions and discount rate costs pursuant to 16-2-101 and costs of operating the central liquor warehouse and must be determined by the department on a yearly basis.

(3) (a) The percent of Montana-produced ingredients is determined as a percentage of the total applicable dry and wet weights of all the fermentable and flavor ingredients used in the production of the liquor as provided by rule adopted by the department.

(b) For the purposes of this section, a Montana-produced ingredient is an agricultural product, either processed or unprocessed, that in its unprocessed state was grown in Montana or, if it is a processed ingredient, that was processed in Montana from unprocessed agricultural products that were grown in Montana. Water is not an ingredient.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, and the provisions of Title 16 apply to [section 1].

Section 3. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved May 6, 2011

CHAPTER NO. 346

[SB 221]

AN ACT PROVIDING THAT THE COMMISSIONER OF INSURANCE MAY WAIVE HEALTH MAINTENANCE ORGANIZATION REQUIREMENTS FOR ACCOUNTABLE CARE ORGANIZATIONS; EXPANDING RULEMAKING AUTHORITY OF THE COMMISSIONER OF INSURANCE; AND AMENDING SECTIONS 33-31-102, 33-31-201, AND 53-6-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-31-102, MCA, is amended to read:

"33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accountable care organization" means a group of health care providers that are willing and capable of accepting accountability for the total cost and quality of care for a defined population.

~~(1)~~*(2)* "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

~~(2)~~*(3)* "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132;

(j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and

(k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.

~~(3)~~*(4)* "Commissioner" means the commissioner of insurance of the state of Montana.

~~(4)~~*(5)* "Dependent" has the meaning provided in 33-22-140.

~~(5)~~*(6)* "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

~~(6)~~*(7)* "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

~~(7)~~*(8)* "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

~~(8)~~*(9)* "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

~~(9)~~*(10)* (a) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(b) The term does not apply to a PACE organization *or an accountable care organization* that has received a waiver pursuant to 33-31-201.

~~(10)~~*(11)* "Insurance producer" means an individual or business entity appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

~~(11)~~*(12)* "PACE organization" means an organization, as defined in 42 CFR 460.6, that is authorized by the centers for medicare and medicaid services and the department of public health and human services to operate a program of all-inclusive care for the elderly.

~~(12)~~*(13)* "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

~~(13)~~*(14)* "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

~~(14)~~*(15)* "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

~~(15)~~*(16)* "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

~~(16)~~*(17)* "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

~~(17)~~*(18)* "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

~~(18)~~*(19)* "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 2. Section 33-31-201, MCA, is amended to read:

"33-31-201. Establishment of health maintenance organizations. (1) Notwithstanding any law of this state to the contrary, a person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. A person may not establish or operate a health maintenance organization in this state except as authorized by a subsisting certificate of authority issued to it by the commissioner. A foreign person may qualify for a certificate of authority if it first obtains from the secretary of state a certificate of authority to transact business in this state as a foreign corporation under 35-1-1028.

(2) Each application of a health maintenance organization, whether separately licensed or not, for a certificate of authority must:

(a) be verified by an officer or authorized representative of the applicant;

(b) be in a form prescribed by the commissioner;

(c) contain:

(i) the applicant's name;

(ii) the location of the applicant's home office or principal office in the United States, if a foreign person;

(iii) the date of organization or incorporation;

(iv) the form of organization, including whether the providers affiliated with the health maintenance organization will be salaried employees or group or individual contractors;

(v) the state or country of domicile; and

(vi) any additional information that the commissioner may reasonably require; and

(d) set forth the following information or be accompanied by the following documents, as applicable:

(i) a copy of the applicant's organizational documents, such as its corporate charters or articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments to those documents, certified by the public officer with whom the originals were filed in the state or country of domicile;

(ii) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the applicant's internal affairs, certified by its secretary or other officer having custody of the documents;

(iii) a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;

(iv) a copy of any contract made or to be made between:

(A) any provider and the applicant; or

(B) any person listed in subsection (2)(d)(iii) and the applicant. The applicant may file a list of providers executing a standard contract and a copy of the contract instead of copies of each executed contract.

(v) the extent to which any of the following will be included in provider contracts and the form of any provisions that:

(A) limit a provider's ability to seek reimbursement for basic health care services or health care services from an enrollee;

(B) permit or require a provider to assume a financial risk in the health maintenance organization, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses; and

(C) govern amending or terminating an agreement with a provider;

(vi) a financial statement showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement satisfies this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter.

(vii) a description of the proposed method of marketing, a financial plan that includes a projection of operating results anticipated until the organization has had net income for at least 1 year, and a statement as to the sources of working capital as well as any other source of funding;

(viii) a power of attorney executed by the applicant, on a form prescribed by the commissioner, appointing the commissioner, the commissioner's successors in office, and the commissioner's authorized deputies as the applicant's attorney to receive service of legal process issued against it in this state;

(ix) a statement reasonably describing the geographic service area or areas to be served, by county, including:

(A) a chart showing the number of primary and specialty care providers, with locations and service areas by county;

(B) the method of handling emergency care, with the location of each emergency care facility; and

(C) the method of handling out-of-area services;

(x) a description of the way in which the health maintenance organization provides services to enrollees in each geographic service area, including the extent to which a provider under contract with the health maintenance organization provides primary care to those enrollees;

(xi) a description of the complaint procedures to be used as required under 33-31-303;

(xii) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under 33-31-222;

(xiii) a summary of the way in which administrative services will be provided, including the size and qualifications of the administrative staff and the projected cost of administration in relation to premium income. If the health maintenance organization delegates management authority for a major corporate function to a person outside the organization, the health maintenance organization shall include a copy of the contract in its application for a certificate of authority. Contracts for delegated management authority must be filed with the commissioner in accordance with the filing provisions of 33-31-301(2). However, this subsection does not deprive the health maintenance organization of its right to confidentiality of any proprietary information, and the commissioner may not disclose that proprietary information to any other person. All contracts must include:

(A) the services to be provided;

(B) the standards of performance for the manager;

(C) the method of payment, including any provisions for the administrator to participate in the profits or losses of the plan;

(D) the duration of the contract; and

(E) any provisions for modifying, terminating, or renewing the contract.

(xiv) a summary of all financial guaranties by providers, sponsors, affiliates, or parents within a holding company system or any other guaranties that are intended to ensure the financial success of the plan, including hold harmless agreements by providers, insolvency insurance, reinsurance, or other guaranties;

(xv) a summary of benefits to be offered enrollees, including any limitations and exclusions and the renewability of all contracts to be written;

(xvi) evidence that it can meet the requirement of 33-31-216(10); and

(xvii) any other information that the commissioner may reasonably require to make the determinations required in 33-31-202.

(3) Each health maintenance organization shall file each substantial change, alteration, or amendment to the information submitted under subsection (2) with the commissioner at least 30 days prior to its effective date, including changes in articles of incorporation and bylaws, organization type, geographic service area, provider contracts, provider availability, plan administration, financial projections and guaranties, and any other change that might affect the financial solvency of the plan. The commissioner may, after notice and hearing, disapprove any proposed change, alteration, or amendment to the business plan. The commissioner may adopt reasonable rules exempting from the filing requirements of this subsection those items that the commissioner considers unnecessary.

(4) An applicant or a health maintenance organization holding a certificate of authority shall file with the commissioner all contracts of reinsurance and any modifications to the contracts. An agreement between a health maintenance organization and an insurer is subject to Title 33, chapter 2, part 12. A reinsurance agreement must remain in full force and effect for at least 90 days following written notice of cancellation by either party by certified mail to the commissioner.

(5) Each health maintenance organization shall maintain, at its administrative office and make available to the commissioner upon request executed copies of all provider contracts.

(6) The commissioner may adopt reasonable rules exempting an insurer or health service corporation operating a health maintenance organization as a plan from the filing requirements of this section if information requested in the application has been submitted to the commissioner under other laws and rules administered by the commissioner.

(7) (a) The commissioner may waive the requirements of this section for a PACE organization that has entered into a PACE program agreement pursuant to 42 U.S.C. 1396u-4.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved annually. The annual renewal process must be completed by June 30 of each year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the PACE organization, any consumer complaints against the PACE organization, and the length of time the PACE organization has been in business.

(d) The PACE organization shall submit an audited financial statement for the organization as a whole and a financial statement for the PACE program specifically with the initial waiver application and annually on June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if the certification of the PACE organization by the centers for medicare and medicaid services or the department of public health and human services expires or is terminated.

(f) The PACE organization shall notify the commissioner within 30 days if the centers for medicare and medicaid services takes adverse action or issues any warnings regarding the continuation of the PACE organization.

(8) (a) (i) The commissioner may waive the requirements of this section for an accountable care organization. Upon establishment of a medicare shared savings program pursuant to 42 U.S.C. 1395jjj, an accountable care organization shall demonstrate compliance with the program requirements in a manner determined by the commissioner.

(ii) The commissioner shall follow the medicare shared savings program structure in developing compliance criteria needed for obtaining a waiver.

(b) A request for waiver must be submitted in a form prescribed by the commissioner. The waiver application must be filed and approved every 3 years. The renewal process must be completed by June 30 of every third year.

(c) The factors that the commissioner may take into account when granting a waiver include but are not limited to the financial condition of the accountable care organization, any consumer complaints against the organization, and the length of time the organization has been in business.

(d) The accountable care organization shall submit an audited financial statement for the organization as a whole and a financial statement for the accountable care organization program specifically with the initial waiver application and annually by June 30. The commissioner may request additional information necessary to evaluate the waiver request.

(e) The waiver automatically expires if certification of the accountable care organization under the medicare shared savings program or the department of public health and human services expires or is terminated."

Section 3. Section 53-6-702, MCA, is amended to read:

"53-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a health maintenance organization as defined in 33-31-102.

(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:

(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis or a PACE organization~~,~~ ~~as defined in 42 CFR 460.6,~~ *or an accountable care organization, as defined in 33-31-102,* that has received a waiver under 33-31-201.

(4) "Managed health care entity" or "entity" means a health maintenance organization or a managed care community network.

(5) "Program" means an element of the integrated health care system created by this part."

Section 4. Coordination instruction. If Senate Bill No. 351 and [this act] are passed and approved and if both contain a section that amends 53-6-702, the sections amending 53-6-702 are void and 53-6-702 must be amended as follows:

"53-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a health maintenance organization as defined in 33-31-102.

~~(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:~~

~~(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or~~

~~(ii) operates statewide or covers 20% or more of the medicaid population.~~

~~(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis or a PACE organization, as defined in 42 CFR 460.6, that has received a waiver under 33-31-201.~~

~~(4)~~*(3) (a)* "Managed health care entity" or "entity" means a health maintenance organization or ~~a managed care community network~~ *an insurer regulated under Title 33 that:*

(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include:

(i) a provider of health care services under a contract with the department on a fee-for-service basis;

(ii) a medicaid primary care case management service within the meaning of 42 CFR 438; or

(iii) a PACE organization as defined in 42 CFR 460.6 or an accountable care organization as defined in 33-31-102 that has received a waiver under 33-31-201.

~~(5)~~*(4)* "Program" means an element of the integrated health care system created by this part."

Approved May 6, 2011

CHAPTER NO. 347

[SB 283]

AN ACT ALLOWING REAL PROPERTY TO BE MOVED FROM ONE COUNTY TO ANOTHER FOR REASONS OF PUBLIC SAFETY; REQUIRING A PETITION AND REQUIRING THAT THE PETITION CONTAIN CERTAIN INFORMATION; REQUIRING THE PETITIONERS TO MEET CERTAIN QUALIFICATIONS; REQUIRING BOARDS OF COUNTY COMMISSIONERS IN AFFECTED ADJOINING COUNTIES TO ENTER INTO AN INTERLOCAL AGREEMENT UPON RECEIPT OF A PETITION BEFORE AN ELECTION MAY BE HELD; REQUIRING THAT THE PROCESS CEASE IF THE ADJOINING COUNTIES ARE UNABLE TO AGREE ON BOUNDARIES; PROVIDING FOR A VOTE AND FORM OF BALLOT; PROVIDING FOR A PROCESS IF THE ELECTORS VOTE TO CHANGE THE BOUNDARIES; REQUIRING TRANSFER OF CERTIFIED COPIES OF INDEXES AND LAND RECORD ABSTRACTS AND PROVIDING FOR REIMBURSEMENT OF ASSOCIATED COSTS; ALLOWING A COUNTY TO WHICH PROPERTY IS TRANSFERRED TO LEVY A TAX; REQUIRING NOTIFICATION OF CERTAIN STATE AGENCIES; PROVIDING THAT SCHOOL DISTRICTS ARE NOT AFFECTED; AMENDING SECTIONS 7-2-103, 7-2-2201, 7-2-2202, 7-2-2411, 7-2-2412, 7-4-2631, 7-4-2632, 7-4-2637, AND 15-10-420, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Alteration of county boundaries for public safety purposes — authorization — petition — definitions. (1) County boundaries may be altered for reasons of improving public safety as provided in [sections 1 through 9].

(2) (a) Before a petition to alter county boundaries as provided in [sections 1 through 9] may be circulated for signatures, a sample petition must be submitted to the county election administrator of the county in which the property is located for approval as to form. The person submitting the sample petition shall consult with a professional land surveyor, as defined in 37-67-101, to prepare a legal description of the proposed new county boundary.

(b) The county election administrator shall refer a copy of the sample petition to the county attorney, who shall review the sample petition to ensure compliance with the requirements of [sections 1 through 9].

(c) The county attorney shall cooperate with and provide necessary services to the person who submitted the petition to ensure that an adequate and valid legal description is written for the proposed new county boundary.

(d) If the petition is rejected as to form, the county election administrator shall within 10 days after submission of the sample send written notice of the

rejection to the person who submitted the petition. If the petition is approved as to form, the election administrator shall within 10 days after submission of the sample send written notice of the approval to the person who submitted the petition. After that notice, the petition may not be challenged except with regard to the number and validity of signatures appended to it.

(3) Upon approval as to form, a petition to alter county boundaries for public safety purposes may be circulated for signatures.

(4) To be considered at an election, the petition must be signed by at least 25 or a majority of the qualified petitioners, whichever is less, and must be submitted within 120 days of the petition's approval as to form to the county clerks of the adjoining counties for which boundary changes are proposed requesting that the proposed boundary changes be submitted to the qualified electors of the adjoining counties.

(5) The petition must include:

(a) the names of the qualified petitioners and the legal description of the property owned by the qualified petitioner that is proposed to be transferred to an adjoining county;

(b) a general description of the property proposed to be moved from one county to another;

(c) a general description and legal description of the proposed boundary change;

(d) a map showing the proposed boundary change; and

(e) the reason, based on proximity to public safety services, for the proposed boundary change.

(6) For the purposes of [sections 1 through 9], the following definitions apply:

(a) "Public safety services" means law enforcement, firefighting, or emergency medical services.

(b) "Qualified petitioner" means an owner of real property in an area of a county that is proposed to become part of an adjoining county whose property may be reached more quickly by public safety services headquartered in the county seat of an adjoining county than by public safety services headquartered in the county seat of the county in which the owner's property is located.

Section 2. Affidavits to be attached to petition — verification of signatures. (1) There must be attached and filed with each sheet or section for a petition to alter county boundaries an affidavit of the person who circulated the petition, stating that it is the person's belief that:

(a) the petition is signed by at least 25 or a majority of the qualified petitioners, whichever is less;

(b) the signatures are genuine; and

(c) each person signing was, at the date of signing, a qualified petitioner.

(2) Upon receipt of the petition, the clerk of the county in which the qualified petitioners' property is located shall verify, using property records filed with the county and any other information that may be necessary, that the signatories are qualified petitioners.

(3) Within 30 days of receipt of the petition, the clerk shall:

(a) certify that the petition is sufficient under the provisions of subsection (2) and present the petition to the governing body at its next meeting; or

(b) reject the petition if it is insufficient under the provisions of subsection (2).

(4) The clerk shall notify the adjoining county where the proposed boundary change will occur of the clerk's action under subsection (3).

(5) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached.

Section 3. County commissioners to accept, amend, or reject petition — public hearing — interlocal agreement. (1) Upon receipt of a petition submitted as provided in [sections 1 and 2], the boards of county commissioners in the adjoining counties for which boundary changes are proposed shall, after providing public notice pursuant to 7-1-2121 in the county seat of each adjoining county, hold a public hearing in the area proposed to be moved from one county to another. After the public hearing, the boards of county commissioners shall either accept, reject, or amend the boundary changes as proposed in the petition.

(2) An interlocal agreement must be entered into by the adjoining counties and must state:

(a) the proposed boundary change as accepted or amended by the boards, including the legal description of the proposed boundary change;

(b) the procedure each board intends to follow in complying with [sections 1 through 9];

(c) subject to subsection (4), the costs to be incurred by each county in complying with [section 7]; and

(d) any other elements to which the boards agree regarding provision of services or county operations upon the relocation of the boundary.

(3) If the boards of county commissioners do not agree on the proposed boundary changes, either as presented in the petition or as amended, or if one or both boards reject the proposal, the process for changing the boundaries must cease and may not be initiated again for a period of 1 year.

(4) The adjoining counties shall negotiate the fees to be charged for compliance with [section 7], and the provisions of 7-2-2412, 7-4-2631, 7-4-2632, and 7-4-2637 regarding fees charged by county clerks do not apply to the processes required in [section 7].

Section 4. Order for election — registered electors entitled to vote. (1) Upon execution of an interlocal agreement under [section 3(2)], the boards of county commissioners in the adjoining counties for which boundary changes are proposed shall, after providing public notice pursuant to 7-1-2121 in the county seat of each adjoining county, hold a public hearing in the area proposed to be moved from one county to another in order to accept comment on the proposed cost of compliance with [section 7] as stated in the interlocal agreement pursuant to [section 3(2)]. After the public hearing, the boards of county commissioners shall order and give notice of an election to be held for the purpose of determining whether or not to change the boundaries of the adjoining counties. The order may not be made less than 75 days before the election is to be held.

(2) The question of determining whether or not to change the boundaries of the adjoining counties must be included on the ballot for the next regular election scheduled not less than 75 days after the date of the order and the notice.

(3) All registered electors of the adjoining counties are entitled to vote at the election.

(4) The notice must require that the ballot contain the legal description of the proposed boundary change, together with any descriptive name or names for the property that may be in common use.

(5) The election must be conducted in conformance with the provisions of Title 13 unless otherwise provided for in [sections 4 through 6].

Section 5. Form of ballot. (1) The ballot containing the question of whether or not to change the boundaries of adjoining counties must include the legal description of the proposed boundary change, together with any descriptive name or names for the property that may be in common use.

(2) The question must be in a form similar to the following:

☐ FOR changing the boundary between ..... (County) and ..... (County) by moving the boundary and the property described from ..... (County) to ..... (County).

☐ AGAINST changing the boundary between ..... (County) and ..... (County) by moving the boundary and the property described from ..... (County) to ..... (County).

(3) The language on the ballot must be the same in each adjoining county in which the election is held.

Section 6. Effect of election — resolution by boards of county commissioners. If, upon the canvass of votes cast at the election, more than 50% of the votes cast in each adjoining county approve the proposed boundary change, then the boards of county commissioners in the adjoining counties shall, by resolution, declare the boundary to be changed as of January 1 of the year that begins at least 13 months after the date the election is held and shall direct the transfer of all certified copies of property records and other records to the appropriate county to be completed by the date the boundary change becomes effective. The resolution must include the legal description of the new boundaries of each county.

Section 7. Transfer of certified copies — costs to be reimbursed — tax levy authorized. (1) Upon a resolution adopted as provided in [section 6], the county clerk in the county from which property will be transferred shall prepare certified copies of the indexes to recorded documents maintained by the county clerk pursuant to 7-4-2619.

(2) (a) The clerk shall contract with a land title company that maintains a geographical tract index of the recorded documents in the county to prepare an abstract of the property to be transferred. The abstract must include deeds, mortgages, assignments of mortgages, leases, mining claims, and any other documents recorded from the date that the county was created to the date of the boundary change implementation as provided in [section 6].

(b) The land title company with which the clerk contracts must be a member in good standing of the Montana land title association.

(3) The clerk shall certify each copy of the recorded documents included in the abstract and shall transfer all copies of indexes and recorded documents certified pursuant to this section to the county clerk of the county to which the property will be transferred. The clerk of the county to which the property will be transferred shall record the documents pursuant to 7-4-2617 and shall maintain an index of the documents pursuant to 7-4-2619.

(4) Actual or customary costs incurred by a county in complying with subsections (1) through (3) must be reimbursed to the county from which certified copies are transferred. Subject to 15-10-420, the county to which records are transferred may levy a property tax against the property that has

been transferred in the amount necessary to reimburse the county that incurred the costs. The property tax levied as provided in this subsection may be collected over a period of up to 5 years.

Section 8. Notification of boundary change — certification of taxable value — indebtedness. (1) Upon implementation of a boundary change under [sections 1 through 9], the county clerk and recorders in the adjoining counties where the boundary was changed shall notify the department of administration, the department of revenue, and the secretary of state of the boundary change.

(2) The department of revenue shall certify to each adjoining county the total taxable value within each county for the year following implementation of the boundary change accounting for the transfer of the property.

(3) The provisions of 7-2-102 apply to a boundary change implemented as provided in [sections 1 through 9].

Section 9. Effect on school districts. Relocation of property from one county to another under [sections 1 through 9] does not affect school district boundaries, the operation of a school district, or the county in which the district was located before the boundary was changed.

Section 10. Section 7-2-103, MCA, is amended to read:

"7-2-103. Collection of taxes upon alteration of boundary of local government. Subject to the provisions of part 27 of this chapter *and [section 9]*, if any territory is detached from any county, city, or town and is annexed to any other county, city, or town ~~therein~~, it does not invalidate or interfere with the collection of taxes in ~~such~~ *the* territory and the taxes ~~shall~~ *must* be collected by and the returns made to the county to which the territory is attached in the manner provided by law for levying and collecting taxes."

Section 11. Section 7-2-2201, MCA, is amended to read:

"7-2-2201. Authorization to create new counties. (1) New counties may~~, from time to time,~~ be formed and created in this state from portions of one or more counties ~~which shall~~ *that must* have been created and in existence for a period of more than 2 years, in the manner ~~set forth and~~ provided in this part.

(2) ~~A~~ *Except as provided in [sections 1 through 9], a* county enlarged by the addition of territory taken from one or more other counties is a new county under the provisions of this part."

Section 12. Section 7-2-2202, MCA, is amended to read:

"7-2-2202. Limitations on creation of new counties. (1) ~~No~~ *A* new county ~~shall~~ *may not* be established ~~which shall reduce~~ *that reduces* any county to an assessed valuation of less than $12 million, inclusive of all assessed valuation as shown by the last preceding assessment.

(2) ~~No~~ *A* new county ~~shall~~ *may not* be formed ~~which~~ *that* contains an assessed valuation of property less than $10 million, inclusive of all assessed valuation, as shown by the last preceding assessment of the county or counties from which ~~such~~ *the* new county is to be established.

(3) ~~No~~ *A* new county ~~shall~~ *may not* be established ~~which shall reduce~~ *that reduces* the area of any existing county from which territory is taken to form ~~such~~ *the* new county to less than 500 square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties.

(4) ~~No~~ *Except as provided in [sections 1 through 9],* territory ~~shall~~ *may not* be taken from one county and added to another county unless its surveyed area is greater than 49 square miles.

(5) ~~No~~ *A* new county ~~shall~~ *may not* be formed ~~which~~ *that* contains less than 250 square miles of surveyed land, exclusive of all forest reserve land or Indian reservations not open for settlement."

Section 13. Section 7-2-2411, MCA, is amended to read:

"7-2-2411. Transfer of court actions affecting real property. (1) In all counties created out of any other county *or where the county boundary has been changed as provided in [section 1 through 9] and* wherever there has been an action or proceeding begun affecting any real property situated within the new county *or the county to which property has been added under [sections 1 through 9]*, whether the action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in the real property affected by the action or proceeding requesting the transfer of the files and papers and records of the action or proceeding to the office of the clerk of the district court of the ~~new~~ county ~~in~~ *to* which the real property is ~~situated~~ *added*, ~~it is the duty of~~ the judge of the district court in which the action or proceeding was originally begun ~~to~~ *shall* order that a transfer of all the files and papers of the action or proceeding be made to the office of the clerk of the district court of the ~~new~~ county ~~in~~ *to* which the real property is ~~situated~~ *added*. When an order of transfer is made, ~~it is the duty of~~ the clerk of the district court in which the action or proceeding was originally instituted ~~to~~ *shall* transmit all of the files and papers in the action or proceeding, together with a certified copy of all minutes of the court relating to the action or proceeding, to the clerk of the ~~new~~ county ~~in~~ *to* which the real property, the subject matter of the action or proceeding, is ~~situated~~ *added*.

(2) The clerk of the district court of the ~~new~~ county ~~in~~ which the property is ~~situated~~ *added* shall, upon the receipt of the files and papers and certified copies of the minutes of the court, file the papers in the clerk's office as transferred files from the original county and shall enter and transcribe upon the clerk's records any final judgment or decree or order contained in the files or papers or records transferred.

(3) Upon the receipt and filing of the files and papers in any action or proceeding transferred to a ~~new~~ county in accordance with the provisions of this section, the district court of the ~~new~~ county in which the files and papers have been transferred has the same jurisdiction with reference to the real property for the enforcement of any decree, judgment, or order that may have been entered or for other proceedings that may be necessary in the action or proceeding as the district court had in the county in which the action or proceeding was originally begun."

Section 14. Section 7-2-2412, MCA, is amended to read:

"7-2-2412. Fees for transfer of court records. (1) ~~The~~ *Except as provided in [section 3(4)], the* clerk of the district court in which an action or proceeding was originally begun is entitled to receive, for transferring the files, papers, and certified copies of the minutes and records entered in connection with the action or proceeding, only a fee at the rate of 20 cents per folio for copies of minutes and 50 cents for a certificate fee.

(2) The clerk of the district court of the ~~new~~ county to which files and papers may be transferred in accordance with the provisions of 7-2-2411 is not entitled to any fees for the filing of the transferred records, but for the filing of any papers that may be filed after the transfer in connection with an action or proceeding or for the issuance of any writs or other papers, the clerk is entitled to charge the same fees as provided by law."

Section 15. Section 7-4-2631, MCA, is amended to read:

"7-4-2631. Fees of county clerk. (1) Except as provided in *[section 3(4)],* 7-4-2632*,* and 7-4-2637, the county clerks shall charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $5;

(d) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $2;

(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;

(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;

(m) for each certified copy of a birth certificate, $5, and for each certified copy of a death certificate, $3;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis."

Section 16. Section 7-4-2632, MCA, is amended to read:

"7-4-2632. Fee when recording done by mechanical means. ~~Whenever~~ *Except as provided in [section 3(4)], whenever* recording is done by a photographic or similar process, the county clerk and recorder shall charge $7 for each page or fraction of a page of the instrument for recording."

Section 17. Section 7-4-2637, MCA, is amended to read:

"7-4-2637. Fees for recording standard documents. (1) Except as provided in *[section 3(4)],* 7-4-2631*,* and subsection (2) of this section, the fee for recording a standard document that meets the requirements of 7-4-2636 is $7 for each page or fraction of a page.

(2) ~~The~~ *Except as provided in [section 3(4)], the* fee for recording a document that does not meet the requirements of 7-4-2636 is $11 for each page or fraction of a page for the first five pages or fractions of the pages and $7 for each subsequent page.

(3) (a) Of the fees collected under subsection (1):

(i) $1 must be deposited in the records preservation fund, provided for in 7-4-2635;

(ii) 25 cents must be deposited in the county land information account provided for in 7-6-2230;

(iii) 75 cents must be transmitted each month to the department of revenue in the manner prescribed by the department of revenue for deposit in the Montana land information account created in 90-1-409; and

(iv) the remainder must be deposited as provided for in 7-4-2511.

(b) Of the fees collected under subsection (2) for nonstandard documents, each $7 amount for a page or fraction of a page must be deposited as provided for in subsection (3)(a). The remaining $4 of each $11 charge for a page or fraction of a page must be deposited in the records preservation fund, provided for in 7-4-2635, and, notwithstanding 7-4-2635(3), each $4 amount from an $11 charge for a page or a fraction of a page may be used only for maintaining, upgrading, or installing systems to digitally record and retrieve documents."

Section 18. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

(iv) a levy for the support of a study commission under 7-3-184;

(v) a levy for the support of a newly established regional resource authority; ~~or~~

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703*; or*

(vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under [section 7] upon relocation of a county boundary.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 19. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 7, chapter 2, and the provisions of Title 7, chapter 2, apply to [sections 1 through 9].

Approved May 5, 2011

CHAPTER NO. 348

[SB 294]

AN ACT PROVIDING FOR FUNDING OF ENTRY-LEVEL EMPLOYEES UNDER THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT BY REQUIRING THAT TO BE ELIGIBLE FOR FUNDING, NEW JOBS CREATED MUST PROVIDE AN AVERAGE WEEKLY WAGE THAT MEETS OR EXCEEDS THE LESSER OF 170% OF MONTANA'S CURRENT MINIMUM WAGE OR THE CURRENT AVERAGE WEEKLY WAGE OF THE COUNTY IN WHICH THE EMPLOYEES ARE TO BE PRINCIPALLY EMPLOYED; PROVIDING ALTERNATE CRITERIA FOR WAGES FOR NEW JOBS; AMENDING SECTIONS 39-11-103 AND 39-11-202, MCA; REPEALING SECTION 39-11-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-11-103, MCA, is amended to read:

"39-11-103. Definitions. As used in this chapter, the following definitions apply:

~~(1) "Average weekly wage" has the meaning provided in 39-71-116.~~

(1) "Average weekly wage" has the meaning provided in 39-71-116.

~~(2)~~*(2)* "Department" means the department of commerce established in 2-15-1801.

~~(3)~~*(3)* "Eligible training provider" means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

~~(4)~~*(4)* "Eligible training provider list" means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

~~(5)~~*(5)* "Employee" means the individual employed in a new job.

~~(6)~~*(6)* "Employer" means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

~~(7)~~*(7)* "Full-time job" means a predominantly year-round position requiring an average of 35 hours of work each week.

~~(8)~~*(8)* (a) "New job" means a newly created full-time job in an eligible business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, part-time or seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

(9) "Part-time job" means a predominantly year-round position requiring an average of 25 to 34 hours of work each week.

~~(9)~~*(10)* "Primary sector business" means an employer engaged in establishing or expanding operations within Montana that through the employment of knowledge or labor add value to a product, process, or export service that results in the creation of new wealth and:

(a) for which at least 50% of the sales of the employer occur outside of Montana;

(b) the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana; or

(c) the employer is a new business that provides, as determined by the ~~committee provided for in 39-11-201~~ *department*, a product or a service that is not available in Montana or a substantially similar product or service that is not available in Montana, which results in state residents leaving the state to purchase the product or service.

~~(10)~~*(11)* "Primary sector business training program" or "program" means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

~~(11)~~*(12)* (a) "Program costs" means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of equipment to be owned or used by the eligible training provider.

~~(12)~~*(13)* "Program services" means training and education specifically directed to the new jobs, including:

(a) all direct training costs, such as:

(i) program promotion;

(ii) instructor wages, per diem, and travel;

(iii) curriculum development and training materials;

(iv) lease of training equipment and training space;

(v) miscellaneous direct training costs;

(vi) administrative costs; and

(vii) assessment and testing;

(b) in-house or on-the-job training; and

(c) subcontracted services with eligible training providers."

Section 2. Section 39-11-202, MCA, is amended to read:

"39-11-202. Primary sector business workforce training grants — eligibility. (1) Subject to appropriation by the legislature, the ~~grant review committee provided for in 39-11-201~~ *department* may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

(a) be a value-adding business as defined by the Montana board of investments;

(b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;

(c) provide a service or function that is essential to the locality or the state; or

(d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least $1 for every $3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The ~~committee~~ *department* may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the ~~committee~~ *department*.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed $5,000 for each full-time position *and $2,500 for each part-time position* for which an employee is being trained. ~~A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of Montana's current average weekly wage or the current average weekly wage of the county in which the employees are to be principally employed.~~ *A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of 170% of Montana's current minimum*

wage or the current average weekly wage of the county in which the employees are to be principally employed, provided minimum wage requirements are met.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The ~~committee~~ *department* may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay ~~significantly higher~~ *high* wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.

(5) Funding ceilings must be determined by the availability of funding, the cost for each job, the quality of the primary sector business proposal, and whether training will be provided in Montana.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the ~~committee~~ *department* to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the ~~committee~~ *department* may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the ~~committee~~ *department* determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the ~~committee, the committee~~ *department, the department* may award a primary sector business workforce

development grant to the employer and authorize the disbursement of funds under contract to the primary sector business.

(8) The department shall provide employers assistance in accessing workforce and education services outside the scope of this chapter for which employees may be eligible. These additional services may not be used to replace a grant provided under this section once the contract has been finalized.

~~(8)~~*(9)* (a) A contract with a grant recipient must contain provisions:

(i) certifying that the amount of the grant already expended will be reimbursed in the event that the primary sector business ceases operation in the state of Montana within the grant contract period, which may be up to 2 years;

(ii) specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and

(iii) providing the department with annual reports and a final closeout report that documents the ~~higher~~ wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive."

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

39-11-201. Grant review committee — appointment — powers and duties — rulemaking authority.

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 349

[SB 326]

AN ACT CREATING THE MONTANA VETERANS' HOME LOAN MORTGAGE PROGRAM WITH MONEY FROM THE PERMANENT COAL TAX TRUST FUND TO BE ADMINISTERED BY THE BOARD OF HOUSING; AMENDING SECTIONS 17-6-201 AND 17-6-308, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature finds that members of the Montana National Guard, residents of Montana in the federal reserves, and Montana residents serving on active duty in the armed forces have all made sacrifices of various kinds in order to serve the state and their country in times of war or national emergency; and

WHEREAS, the Legislature further finds that while those sacrifices may be difficult to quantify or compare because they range from loss of time with family and friends due to demands of reserve duty to loss of life in the service of the country, those sacrifices have in common that they occurred because of the status of the individual as a member of the armed forces; and

WHEREAS, the Legislature further finds that it has the authority pursuant to Article II, section 35, of the Montana Constitution to recognize and reward this status by providing special consideration to the status of service members and veterans; and

WHEREAS, the Legislature finds that it is appropriate to reward this status and the sacrifices the status represents by facilitating the fulfillment of the

American dream of home ownership for those who serve or have served in the American armed forces; and

WHEREAS, the purpose of the Montana Veterans' Home Loan Mortgage Program Act is not to provide the most substantial return on the investment of money in the coal tax trust fund used for the program but to use some of the money in the trust fund for a mortgage loan program so that first-time home buyers who are eligible veterans can acquire a mortgage loan at a rate lower than prevailing market rates and in this way reward those eligible veterans who have served this country well and reward the unremarried spouses of eligible veterans who have made the ultimate sacrifice in service to their country.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 5] may be cited as the "Montana Veterans' Home Loan Mortgage Program Act".

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Board" means the board of housing provided for in section 2-15-1814.

(2) "Coal tax trust fund" or "trust fund" means the trust fund created pursuant to Article IX, section 5, of the Montana constitution.

(3) "Eligible veteran" means an individual who is a Montana resident and who:

(a) is or has been a member of the Montana national guard;

(b) is or has been a member of the federal reserve forces of the armed forces of the United States, serving pursuant to Title 10 of the United States Code;

(c) is serving or has served on federal active duty pursuant to Title 10 of the United States Code;

(d) is an unremarried spouse of an individual who was otherwise an eligible veteran and was killed in the line of duty;

(e) is an eligible veteran as defined by the board pursuant to [section 6(2)]; or

(f) if previously a member of the armed forces, was discharged under honorable conditions.

(4) "First-time home buyer" means an individual determined by the board to be a first-time home buyer pursuant to rules adopted by the board.

(5) "Mortgage loan" means a loan for the purchase of real property with any improvements located within this state that is to be used for residential purposes and that is based upon a written instrument approved by a federal agency and that is written in the form of a trust indenture.

(6) "Participating financial institution" means a corporate lender or other loan originator approved by the board for originating and servicing loans pursuant to [sections 1 through 5].

(7) "Resident" means an individual who maintains a permanent place of abode within Montana and who has not established a residence elsewhere even though the individual may be temporarily absent from the state.

(8) "Trust indenture" has the meaning provided in 71-1-303.

(9) (a) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharge and general discharge.

(b) The term does not include a dishonorable discharge or another administrative discharge characterized by military regulation as other than honorable.

(10) "Veterans' home loan mortgage program" or "program" means the program created in [section 3].

Section 3. Veterans' home loan mortgage program created — use of coal tax trust fund money. (1) There is a Montana veterans' home loan mortgage program under the direction and management of the board for eligible veterans who are first-time home buyers.

(2) The board of investments shall allow the board to administer $15 million of the permanent coal tax trust fund for the purpose of the program. Until the board uses money in the trust fund to purchase a mortgage loan from a participating financial institution pursuant to [sections 1 through 5], the money under the administration of the board must remain invested by the board of investments. As a loan made pursuant to [sections 1 through 5] is repaid, the principal payments on the loan must be deposited in the trust fund until all of the principal of the loan is repaid. Interest received on the loan may be used by a participating financial institution and the board, in amounts determined by the board in accordance with [section 5], to pay for the origination and servicing of a loan by a participating financial institution and to pay the reasonable costs of the board for the administration of the program. After payment of associated expenses, interest received on the loan must be deposited into the trust fund.

(3) Interest on a home mortgage loan made pursuant to [sections 1 through 5] must be charged at 1% less than the federal national mortgage association's delivery rate or 1% lower than the lowest interest rate charged by the board for the purposes of other home loan mortgage programs administered by the board, whichever is less. If the federal national mortgage association's rate becomes unavailable, the board shall use another similar rate for the purposes of this subsection. The board may not make a direct loan to an eligible veteran.

Section 4. Additional terms of program. (1) The maximum amount of a loan made by the board pursuant to [sections 1 through 5] is 95% of the value of the statewide allowable purchase price determined by the board pursuant to [section 5].

(2) The board shall require as a condition for a loan that an eligible veteran participate in a first-time home buyer education program approved by the board.

(3) A loan made by the board must be secured by a government guaranty pursuant to rules adopted by the board unless the board determines pursuant to [section 5(2)] to allow the use of conventional mortgage insurance requirements and coverage.

(4) An eligible veteran must participate in a loan by contributing a minimum amount of $2,500 unless the board determines otherwise pursuant to [section 5(2)].

(5) There is no limit on the maximum amount of income that may be earned by an eligible veteran for the purposes of a loan pursuant to [sections 1 through 5].

(6) In order to allow small financial institutions to participate equitably in the program along with large financial institutions, the board shall adopt rules pursuant to [section 5] to specify the maximum amount of mortgage loans that may be made by any one participating financial institution.

(7) The legislative auditor must be allowed access to all documentation used for the purpose of the program.

(8) A report describing at least the operation and use of the program must be made by the board to the legislature as provided in 5-11-210. The report may be

combined with other reports by the board or the department of commerce to the legislature.

Section 5. Rules to be adopted by board. (1) The board shall adopt rules pursuant to the Montana Administrative Procedure Act necessary for administration of the program, including rules:

(a) specifying what financial institutions may be participating financial institutions;

(b) specifying underwriting criteria for a program loan, such as minimum down payment, credit score, ratios of housing expense and of all reoccurring debt as a percentage of income of the borrower, and exceptions to those criteria;

(c) specifying the statewide allowable purchase price of a home for the purposes of the program;

(d) specifying the security required for a mortgage loan financed by the program;

(e) providing the legislative auditor with access to records of participating financial institutions regarding loans made pursuant to [sections 1 through 5];

(f) governing the loan application process;

(g) specifying the maximum servicing fees and origination fee that may be charged by a participating financial institution; and

(h) other loan conditions determined to be necessary by the board.

(2) The board may adopt rules pursuant to the Montana Administrative Procedure Act changing any of the following provisions if the board determines a change is necessary to carry out the purposes of the program:

(a) the definition of eligible veteran in [section 2];

(b) the security for a loan provided in [section 4]; and

(c) the requirements for minimum participation for the eligible veteran provided for in [section 4].

Section 6. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(e) This section does not prevent investment in home loan mortgages under the provisions of the Montana veterans' home loan mortgage program provided for in [sections 1 through 5].

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund, other than the fund derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. An appropriation to pay the costs of administering and accounting for the Morrill Act fund is provided for in 77-1-108."

Section 7. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. (1) Except as provided in subsections (2) through ~~(4)~~ *(5)* and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans.

Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science and technology development are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana facility finance authority to administer $15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall allow the board of housing to administer $15 million of the permanent coal tax trust fund for the purposes of the Montana veterans' home loan mortgage program provided for in [sections 1 through 5].

~~(5)~~*(6)* The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

~~(6)~~*(7)* All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund."

Section 8. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 1 through 5].

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 350

[SB 331]

AN ACT GENERALLY REVISING SURPLUS LINES INSURANCE LAW; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ENTER INTO COOPERATIVE OR RECIPROCAL AGREEMENTS WITH OTHER STATES OR A CLEARINGHOUSE FOR THE PURPOSE OF COLLECTING,

ALLOCATING, AND DISBURSING PREMIUM TAXES AND FEES ATTRIBUTABLE TO MULTISTATE RISKS; REVISING DEFINITIONS; DEFINING "EXEMPT COMMERCIAL PURCHASER" AND "QUALIFIED RISK MANAGER"; PROVIDING EXCLUSIVE REGULATORY AND TAXING AUTHORITY TO THE HOME STATE OF THE INSURED; EXEMPTING SURPLUS LINES INSURANCE PRODUCERS FROM DILIGENT SEARCH REQUIREMENTS UNDER CERTAIN CIRCUMSTANCES; SPECIFYING CERTAIN LICENSING REQUIREMENTS; REVISING REQUIREMENTS PERTAINING TO UNAUTHORIZED INSURERS; ESTABLISHING REPORTING REQUIREMENTS; ESTABLISHING A TAX RATE ON SURPLUS LINES PREMIUMS; EXPANDING THE COMMISSIONER'S RULEMAKING AUTHORITY; REVISING EXEMPTIONS TO BE CONSISTENT WITH THE EXCLUSIVE REGULATORY JURISDICTION OF THE HOME STATE OF THE INSURED; ESTABLISHING THE FUNCTIONS OF THE SURPLUS LINES INSURANCE ADVISORY ORGANIZATION; AMENDING SECTIONS 2-9-211, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-307, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-317, AND 33-2-321, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-211, MCA, is amended to read:

"2-9-211. Political subdivision insurance. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(1)(b)~~*(2)(a)(ii)* through ~~(1)(d)~~ *(2)(a)(iv)*. Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(1)(b)~~*(2)(a)(ii)* through ~~(1)(d)~~ *(2)(a)(iv)* only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyd's of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by

2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf."

Section 2. Section 33-2-301, MCA, is amended to read:

"33-2-301. Short title — purpose — definitions. (1) This part constitutes and may be referred to as "The Surplus Lines Insurance Law".

(2) The purpose of this part is to:

(a) protect persons seeking insurance in this state;

(b) permit surplus lines insurance to be placed with reputable and financially sound unauthorized insurers and to be exported from this state pursuant to this part;

(c) establish a system of regulation that will permit orderly access to surplus lines insurance in this state and encourage authorized insurers to provide new and innovative types of insurance to consumers in this state; and

(d) protect revenues of this state.

(3) As used in this part, the following definitions apply:

(a) "Affiliated" means that a person directly or indirectly controls, is controlled by, or is under common control with the insured.

(b) "Affiliated group" means any group of persons that are affiliated.

(c) "Approved risk list" means the list approved by the commissioner of the kinds of insurance presumed unobtainable from authorized insurers when Montana is the home state of the insured.

~~(a)~~*(d)* "Authorized insurer" means an insurer authorized pursuant to 33-2-101 to transact insurance in this state.

~~(b)~~*(e)* (i) "Business entity" means a corporation, a limited liability company, an association, a partnership, a limited liability partnership, or other legal entity.

(ii) The term does not include an individual.

(f) "Control", including the terms "controlled by" and "under common control with", means that:

(i) the person directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25% or more of any class of voting securities of a business entity; or

(ii) the person controls in any manner the election of a majority of the directors or trustees of a business entity.

~~(c)~~*(g)* "Eligible surplus lines insurer" means an unauthorized insurer ~~with which a surplus lines insurance producer may place~~ *that is eligible to issue* surplus lines insurance under 33-2-307.

(h) "Exempt commercial purchaser" has the meaning provided in [section 3].

~~(d)~~*(i)* "Export" means to place surplus lines insurance with an unauthorized insurer.

(j) "Home state" means, with respect to an insured:

(i) the state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence;

(ii) if 100% of the insured risk is located outside the state referred to in subsection (3)(j)(i), the state with the greatest allocated percentage of the insured's taxable premium for that surplus lines insurance contract;

(iii) if more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, the home state as determined under subsection (3)(j)(i) or (3)(j)(ii) for the member of the affiliated group that has the largest percentage of premium attributed to it under the surplus lines insurance contract; or

(iv) if a group policyholder pays 100% of the premium from its own funds, the home state of the group policyholder as determined under subsection (3)(j)(i), or if a group policyholder does not pay 100% of the premiums from its own funds, the home state of the group member as determined under subsection (3)(j)(i).

(k) "Independently procured insurance" means surplus lines insurance procured directly by an insured from an eligible surplus lines insurer.

(l) "Multistate risk" means a risk covered by an unauthorized insurer with insured exposures in more than one state.

(m) "Principal place of business" means the state where the insured business maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured.

(n) "Principal residence" means the state where an individual insured resides for the greatest number of days during a calendar year or, if the insured's principal residence is located outside of any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is located.

~~(e)~~*(o)* "Producing insurance producer" means ~~the individual~~ *a Montana-licensed property and casualty* insurance producer dealing directly with ~~the~~ *a* person seeking insurance.

(p) "Qualified risk manager" has the meaning provided in [section 4].

(q) "Single-state risk" means a risk covered by an unauthorized insurer with exposures in only one state.

(r) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

~~(f)~~*(s)* (i) "Surplus lines insurance" means ~~any insurance on risks resident, located, or to be performed in this state permitted to be placed~~ *any property or casualty insurance permitted in a state to be placed directly or through a surplus lines insurance producer* ~~through a surplus lines insurance producer~~ with an unauthorized insurer eligible to accept the insurance. *The term includes independently procured insurance.*

(ii) The term does not include the kinds of insurance exempted under 33-2-317.

~~(g)~~*(t)* "Surplus lines insurance producer" means an individual or business entity licensed under 33-2-305 to place surplus lines insurance on risks resident, located, or to be performed in this state with unauthorized insurers eligible to accept the insurance.

~~(h)~~*(u)* "Unauthorized insurer" means ~~an insurer not authorized pursuant to 33-2-101 to transact insurance in this state. The term includes insurance exchanges authorized under the laws of other states~~*, with respect to a state, an insurer not authorized to transact the business of insurance in the state. The term includes an insurance exchange authorized under the laws of another state. The*

term does not include a risk retention group, as that term is defined in the Liability Risk Retention Act of 1986, 15 U.S.C. 3901(a)(4)."

Section 3. Exempt commercial purchaser defined. (1) An exempt commercial purchaser means an individual or business entity who at the time of placement:

(a) employs or retains a qualified risk manager to negotiate insurance coverage;

(b) has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months; and

(c) meets at least one of the following criteria:

(i) possesses a net worth in excess of $20 million, as that amount may be adjusted pursuant to subsection (2);

(ii) generates annual revenue in excess of $50 million, as that amount may be adjusted pursuant to subsection (2);

(iii) employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate;

(iv) is a not-for-profit organization or a public entity generating annual budgeted expenditures of at least $30 million, as that amount may be adjusted pursuant to subsection (2); or

(v) is a municipality with a population in excess of 50,000 persons.

(2) Effective January 1, 2015, and on every 5th subsequent January 1, the amounts in subsections (1)(c)(i), (1)(c)(ii), and (1)(c)(iv) must be adjusted to reflect the percentage of change for that 5-year period in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor.

Section 4. Qualified risk manager defined. (1) A qualified risk manager means a person who:

(a) is an employee of or a third-party consultant retained by the commercial policyholder;

(b) provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis and purchases of insurance; and

(c) has the qualifications specified in subsection (2).

(2) To be a qualified risk manager, a person must have:

(a) (i) a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management; and

(ii) (A) 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(B) one of the following designations:

(I) a designation as a chartered property and casualty underwriter (CPCU) issued by the American institute for CPCU/insurance institute of America;

(II) a designation as an associate in risk management issued by the American institute for CPCU/insurance institute of America;

(III) a designation as certified risk manager issued by the national alliance for insurance education and research;

(IV) a designation as a risk and insurance management society fellow issued by the global risk management institute;

(V) any other designation, certification, or license determined by the commissioner to demonstrate minimum competency in risk management;

(b) (i) at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(ii) any one of the designations specified in subsection (2)(a)(ii)(B);

(c) at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(d) a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the commissioner to demonstrate minimum competence in risk management.

Section 5. Section 33-2-302, MCA, is amended to read:

"33-2-302. *Home state exclusive authority* — ~~Conditions~~ *conditions* precedent to sale of surplus lines insurance. (1) *Pursuant to the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, the transaction of surplus lines insurance is subject to the statutory and regulatory requirements of the home state of the insured, regardless of whether a multistate risk is covered. If, at the time of the surplus lines insurance transaction, the home state:*

(a) is Montana, the surplus lines insurance transaction is subject to the applicable statutory and regulatory requirements in Montana; or

(b) is not Montana, the Montana statutory and regulatory requirements regarding the surplus lines insurance transaction are preempted by the statutory and regulatory requirements of the home state.

(2) When Montana is the home state at the time of the surplus lines insurance transaction, the following apply:

(a) A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with an unauthorized insurer if:

~~(a)~~*(i)* the insurer is an eligible surplus lines insurer;

~~(b)~~*(ii)* the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers or, in the case of a renewal, the line of insurance has not become available from an authorized insurer~~;~~*, as evidenced by one of the following:*

~~(c)~~*(A)* the producing insurance producer ~~makes~~ *making* a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

(B) the appearance on the current approved risk list of the kind of insurance being sought;

~~(d)~~*(iii)* the insurance is not procured for the purpose of securing:

~~(i)~~*(A)* a lower premium rate than would be accepted by an authorized insurer unless the premium rate quoted by the authorized insurer is at least 10% higher and at least $1,500 greater than the premium rate quoted by the unauthorized insurer; or

~~(ii)~~*(B)* an advantage in terms of the insurance contract; and

~~(c)~~*(iv)* all other requirements of this part are met.

~~(2)~~*(b)* A contract of insurance may not be placed with an unauthorized insurer under subsection ~~(1)(d)(i)~~ *(2)(a)(iii)(A)* unless the unauthorized insurer ~~is the equivalent of A-rated or better~~ *is eligible under 33-2-307* and the unauthorized insurer or the surplus lines insurance producer that placed the contract of insurance with the unauthorized insurer has provided the insured with disclosure information in a form and content approved by the commissioner.

(c) A surplus lines insurance producer placing coverage with an eligible surplus lines insurer for an exempt commercial purchaser is not required to satisfy the search requirements in subsection (2)(a) if:

(i) the surplus lines insurance producer placing the coverage has disclosed to the exempt commercial purchaser that the insurance may or may not be available from an authorized insurer that may provide greater protection with more regulatory oversight; and

(ii) the exempt commercial purchaser has subsequently requested in writing to the surplus lines insurance producer that the coverage be placed with the surplus lines insurer."

Section 6. Section 33-2-303, MCA, is amended to read:

"33-2-303. Filing and endorsement of contract — *submission form*. *(1)* Each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance under this part*, along with a submission form prescribed by the commissioner by rule,* must be filed with*:*

(a) the commissioner if Montana is the home state of the insured and:

(i) the coverage is for a single-state risk; or

(ii) the commissioner has not entered an agreement pursuant to [section 17] for multistate risks;

(b) the clearinghouse, established pursuant to [section 17], if in operation and if the commissioner has entered an agreement pursuant to [section 17] for multistate risks. ~~the commissioner, or with the surplus lines advisory organization formed pursuant to 33-2-321, and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under surplus lines insurance producer's license No. ....." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent".~~

(2) The commissioner shall establish by rule a submission form for reporting surplus lines transactions. The commissioner may establish different submission forms for insureds that independently procured insurance, surplus lines insurance producers, single-state risks, and multistate risks. The submission form for surplus lines insurance producers must include:

(a) information regarding the producing producer's diligent efforts to place the coverage with authorized insurers and the results of the efforts; and

(b) the producing insurance producer's affirmation that the producer has expressly advised the insured prior to placing the insurance that:

(i) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(ii) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.

(3) A submission form filed under this section is subject to public inspection.

(4) The commissioner may establish by rule an endorsement to be made on each insurance contract, cover note, or certificate of insurance procured and delivered as surplus lines insurance by a surplus lines insurance producer under this part advising the insured that the coverage is issued by an unauthorized insurer that is not covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent. The surplus lines *insurance* producer shall properly fill in and sign the endorsement."

Section 7. Section 33-2-305, MCA, is amended to read:

"33-2-305. Licensing of surplus lines insurance producer — fee. (1) If ~~a~~ *Montana is the home state of the insured, the* person ~~places~~ *placing* a contract of surplus lines insurance with an unauthorized insurer~~, the person placing the contract must be licensed as a property and casualty insurance producer and~~ *must* possess a current surplus lines insurance producer's license issued by the commissioner.

(2) The commissioner shall issue ~~a surplus lines insurance producer's license to any qualified holder of~~ *licenses to persons to act as surplus lines insurance producers on either a resident or nonresident basis. To be eligible for a resident surplus lines insurance producer license, the person must hold* a current property and casualty insurance producer license. ~~only if the insurance producer has:~~

(3) Persons applying for a resident surplus lines insurance producer license must:

(a) ~~remitted~~ *remit* to the commissioner the fee prescribed by 33-2-708; and

(b) ~~submitted~~ *submit* to the commissioner a completed license application in a form *and manner* approved by the commissioner.

(4) Persons applying for a nonresident surplus lines insurance producer license must comply with 33-17-401.

~~(3)~~*(5)* The licensee shall renew the license on a form prescribed by the commissioner. The commissioner may establish rules for biennial renewal of the license. A license lapses if not renewed.

~~(4)~~*(6)* A business entity is eligible to be licensed as a surplus lines insurance producer if:

(a) the business entity license lists the individuals within the business entity who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the business entity license transact surplus lines insurance.

~~(5)~~*(7)* This section may not be construed to require agents, producers, or brokers acting as intermediaries between a surplus lines insurance producer and an unauthorized insurer under this part to hold a valid Montana surplus lines insurance producer's license.

(8) This section may not be construed to require a surplus lines insurance producer license for independently procured insurance.

(9) The commissioner may participate in the national association of insurance commissioners' producer licensing database regarding surplus lines insurance producer licensing."

Section 8. Section 33-2-307, MCA, is amended to read:

"33-2-307. Requirements for eligible surplus lines insurers — *list of eligible surplus lines insurers.* (1) ~~A~~ *If an unauthorized insurer is domiciled*

in any state, a surplus lines insurance producer may not place insurance with ~~an~~ *that* unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) is authorized to issue the same kind of property or casualty insurance in its domiciliary jurisdiction; and

~~(a) has established satisfactory evidence of good reputation and financial integrity; and~~

~~(b) is qualified under one of the following subsections:~~

~~(i) the insurer~~

(b) maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

~~(A)~~*(i)* the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

~~(B)~~*(ii)* $15 million. An insurer possessing less than $15 million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon *such* factors ~~of~~ *as* the quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; *market availability;* and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than ~~$7 million~~ *$4.5 million*.

(2) If an unauthorized insurer is an alien insurer, a surplus lines insurance producer may not place insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer appears

~~(ii) in the case of Lloyd's or another similar group including incorporated and unincorporated alien insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The incorporated members of the group may not engage in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.~~

~~(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).~~

~~(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and~~

~~surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear~~ on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

~~(c) has provided the commissioner a copy of its current annual statement, certified by the insurer not more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and that is either:~~

~~(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or~~

~~(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.~~

~~(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.~~

(3) ~~In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of~~ *A list of* eligible surplus lines insurers *must be* published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

~~(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:~~

~~(i) is in unsound financial condition;~~

~~(ii) is no longer eligible under subsections (1) through (3);~~

~~(iii) has willfully violated the laws of this state; or~~

~~(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.~~

~~(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.~~

~~(5)~~*(4)* As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

Section 9. Section 33-2-310, MCA, is amended to read:

"33-2-310. Records ~~and annual~~ — *tax and fee* statement — ~~affidavit~~. (1) Each surplus lines insurance producer shall keep a separate record and account of all business transacted under the producer's license, including a copy of each daily report, if any, or of each policy, certificate of insurance, cover note, or other evidence of insurance issued or delivered by the producer. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

(2) ~~Prior to April 1 of each year~~ *By the reporting date established by the commissioner by rule*, the surplus lines insurance producer shall file with the commissioner *or with the clearinghouse if requested by the commissioner* a *tax*

and fee statement for the preceding ~~calendar year showing~~ *reporting period. The commissioner shall establish by rule the content and form of the tax and fee statement that must include but is not limited to*:

(a) name and ~~address~~ *principal residence* of ~~each~~ *the* insured *or the address at which the insured maintains its principal place of business* ~~for whom surplus lines insurance was procured~~;

(b) a brief and general description of the risk or exposure insured and where located;

~~(b)~~*(c)* name and home office address of each insurer providing the surplus lines insurance;

~~(c)~~*(d)* amount of each surplus lines insurance policy, the premium rate, and the gross premium charged for the policy;

~~(d)~~*(e)* date and term of the policy;

~~(e)~~*(f)* amount of premium returned on each policy canceled or not taken;

~~(f)~~*(g)* amount of tax and other sums to be collected from the insured;

~~(g)~~*(h)* identity of the producing insurance producer; and

~~(h)~~*(i)* additional information that the commissioner may reasonably require.

~~(3) Each producing insurance producer shall execute and each surplus lines insurance producer shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of the efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing insurance producer shall state in the affidavit that the producer has expressly advised the insured prior to placing the insurance that:~~

~~(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and~~

~~(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage.~~

(3) If Montana is the home state of the insured, an insured that has independently procured insurance shall report the surplus lines insurance transaction to the commissioner or the clearinghouse if requested by the commissioner in a manner and format prescribed by the commissioner. The insured is responsible for payment of the taxes, stamping fees, and clearinghouse processing fees associated with the surplus lines insurance transaction and is subject to the penalties under this part for failure to timely pay the taxes and fees."

Section 10. Section 33-2-311, MCA, is amended to read:

"33-2-311. ~~Tax~~ *Tax* on surplus lines *insurance.* *(1)* ~~There is imposed~~ *Except as provided in [section 17], when this state is the home state of the insured, the surplus lines insurance producer shall collect from the insured and pay to the commissioner a tax* upon premiums collected for surplus lines insurance transacted in this state ~~a tax at the same rate and~~. *The amount of premiums collected and the tax rate must be* computed in the same manner as provided in 33-2-705 as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes, and in excess of the premium otherwise required, are not considered to be part of the premium for the purposes of the computation. Upon filing of the ~~annual~~ *tax and fee*

statement referred to in 33-2-310~~(2)~~, the surplus lines insurance producer shall pay to the commissioner the amount of tax owing as to surplus lines insurance business transacted by the surplus lines insurance producer during the preceding ~~calendar year~~ *reporting period as well as the stamping fee on the premium payable by the insured regardless of whether the coverage includes risks or exposures partially located or to be performed in another state*. ~~If a surplus lines insurance policy covers risks or exposures only partially in this state, the tax payable must be computed upon the proportion of the premium that is properly allocable to the risks or exposures located in this state.~~

(2) Except as provided in [section 17], if this state is not the home state of the insured, the commissioner may not collect any tax or stamping fee regardless of whether the coverage includes risks or exposures partially located or to be performed in this state.

(3) The commissioner by rule shall establish procedures that provide for the collection and payment of premium taxes, as well as the reporting of premium tax and surplus lines insurance transaction data, in accordance with the provisions of the Nonadmitted and Reinsurance Reform Act of 2010, Title V, subtitle B, of Public Law 111-203, for payment of taxes on this state's portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state."

Section 11. Section 33-2-312, MCA, is amended to read:

"33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee. (1) A surplus lines insurance producer ~~who~~ *or an insured that independently procured insurance that* fails to ~~make and~~ file the ~~annual~~ *tax and fee* statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable ~~to~~ *for* a penalty of $25 for each day of delinquency, commencing ~~with April 1~~ *30 calendar days after the due date established by the commissioner by rule*. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction~~,~~ *with* the attorney general representing the commissioner. The penalty when collected, unless collected by a justice's court, must be paid to the *commissioner, forwarded to the* state treasurer*,* and placed to the credit of the general fund. The surplus lines insurance producer's license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines insurance producer *or an insured that independently procured insurance* does not pay the stamping fee provided for in 33-2-321, the commissioner ~~or the surplus lines advisory organization formed pursuant to 33-2-321~~ may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."

Section 12. Section 33-2-313, MCA, is amended to read:

"33-2-313. Revocation or suspension of license. (1) The commissioner shall revoke or suspend any surplus lines insurance producer's license, together with any license as an insurance producer:

(a) if the insurance producer fails to file ~~an annual~~ *a tax and fee* statement or to remit the tax *and fee* as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine the records, as required by law;

(c) if the insurance producer falsifies the ~~affidavit~~ *submission form* required by 33-2-310~~(3)~~;

(d) if the insurance producer closes the surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

(e) if the insurance producer violates any provision of this part; or

(f) for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension, revocation, or refusal to license or renew a license or for imposing a fine on an insurance producer or applicant apply to the suspension, revocation, or refusal to license or renew a license or to imposing a fine on a surplus lines insurance producer or applicant.

(3) An insurance producer whose license has been revoked or suspended may not again be licensed within 1 year after revocation or suspension or until the insurance producer pays all penalties and delinquent taxes that are owed."

Section 13. Section 33-2-316, MCA, is amended to read:

"33-2-316. Rules. The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

(1) effectuation of The Surplus Lines Insurance Law; *and*

(2) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers~~; and~~

~~(3) establishment, procedures, and operations of the surplus lines advisory organization formed pursuant to 33-2-321 or others designed to assist a surplus lines insurance producer to comply with The Surplus Lines Insurance Law~~."

Section 14. Section 33-2-317, MCA, is amended to read:

"33-2-317. Exemptions. The Surplus Lines Insurance Law does not apply to reinsurance or to the following kinds of insurance when placed by a licensed insurance producer of this state:

(1) wet marine insurance;

~~(2) insurance on subjects located, residing, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;~~

~~(3)~~*(2)* insurance on property or operations of railroads engaged in interstate commerce; and

~~(4)~~*(3)* insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft."

Section 15. Section 33-2-321, MCA, is amended to read:

"33-2-321. ~~Surplus lines advisory organizations — examination by commissioner — stamping~~ *Stamping* fee *and clearinghouse processing fee*. ~~(1) A surplus lines advisory organization of surplus lines insurance producers may be formed to:~~

~~(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;~~

~~(b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether the surplus lines insurance complies with this part;~~

~~(c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market; and~~

~~(d) receive and disseminate to its members information relative to surplus lines insurance.~~

~~(2) The surplus lines advisory organization shall file with the commissioner:~~

~~(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;~~

~~(b) a copy of its bylaws, rules, and regulations governing its activities;~~

~~(c) a current list of its members;~~

~~(d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at the commissioner's direction may be served; and~~

~~(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).~~

~~(3) The commissioner may make or cause to be made an examination of the surplus lines advisory organization. The surplus lines advisory organization shall pay the reasonable cost of an examination upon presentation to it by the commissioner of a detailed account of the cost. The officers, managers, insurance producers, and employees of the surplus lines advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined surplus lines advisory organization and shall notify the surplus lines advisory organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the surplus lines advisory organization or any of its members to be in violation of this part, the commissioner may issue an order requiring the discontinuance of the violation.~~

~~(4) The commissioner may by order compel a surplus lines insurance producer to join the surplus lines advisory organization as a condition of continued licensure under this part.~~

~~(5) (a) If a surplus lines advisory organization is performing functions as provided in subsection (1), it~~

(1) The commissioner may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted ~~by its members~~ in this state. The commissioner shall establish the stamping fee by rule~~. The surplus lines advisory organization shall use the stamping fees it collects to pay its expenses in connection with performing the functions set forth in subsection (1).~~

~~(b) If a surplus lines advisory organization is not operating as set forth in this section, the stamping fee may be collected by the commissioner and placed in a state special revenue account for~~ *commensurate with* the expenses of regulating surplus lines. *The stamping fee must be placed in a state special revenue account to the credit of the commissioner's office and used for the expenses of the commissioner's office in regulating surplus lines insurance.*

(2) If the commissioner has entered an agreement with a clearinghouse as authorized pursuant to [section 17] to process multistate risks and allocate and distribute taxes and fees collected, the clearinghouse may collect a processing fee from the surplus lines insurance producer or the insured that independently procured insurance. The processing fee may be a flat fee per submission, a percentage of the premium payable for surplus lines insurance, or a combination of a flat fee and a percentage of premium payable. When a percentage of premium payable is used in calculating the processing fee, the charge may not exceed 1% of the premium payable for surplus lines insurance. The commissioner shall

establish the processing fee by rule to be commensurate with the clearinghouse's charges to process multistate risks and allocate and distribute taxes and fees collected to the participating states.

(3) If applicable, the surplus lines insurance producer shall collect the stamping fee and clearinghouse processing fee from the insured in addition to the premium payable for the insurance contract and any taxes and fees."

Section 16. Surplus lines advisory organization — consultation with commissioner in developing approved risk list. (1) A surplus lines insurance advisory organization of surplus lines insurance producers may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines insurance market;

(c) receive and disseminate to its members information relative to surplus lines insurance; and

(d) communicate member and industry concerns to the commissioner.

(2) The surplus lines insurance advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members.

(3) The commissioner may consult with the organization in regard to the development of the approved risk list and other matters concerning the regulation of surplus lines insurance transactions.

Section 17. Authorization for agreements with other state regarding multistate risks. (1) Following negotiated rulemaking under Title 2, chapter 5, the commissioner may enter into a cooperative or reciprocal agreement with other states, individually or collectively, for the purposes of collecting, allocating, and disbursing premium taxes and fees attributable to multistate risks. The allocation methodology of any agreement must be based upon readily available data, with simplicity and uniformity for the surplus lines insurance producer as a material consideration. Any agreement regarding multistate risks may require that a single, blended tax rate be used.

(2) An agreement entered into under this section must provide for:

(a) uniform eligibility standards for unauthorized insurers;

(b) uniform methods for reporting surplus lines insurance transactions and sharing information between the parties to the agreement based upon readily available data;

(c) uniform methods for allocating and reporting surplus lines insurance risk classifications based upon readily available data;

(d) uniform procedures for the collection, allocation, and distribution of taxes and fees attributable to the multistate risks;

(e) uniform disclosures to policyholders regarding the reporting and collection of premium taxes on multistate risks;

(f) an allocation methodology and resulting collection of premium tax revenue, less costs of administration and collection, that generate premium tax revenue not less than the premium tax revenue collected under 33-2-311;

(g) minimizing the data collection and reporting burden on insureds and surplus lines insurance producers;

(h) a withdrawal process that minimizes instability among the participating states and the surplus lines and insurance industries;

(i) regulatory provisions that provide certainty regarding compliance to all persons having an interest in surplus lines insurance transactions, including but not limited to insureds, regulators, surplus lines insurance producers, other insurance producers, and surplus lines insurers; and

(j) continued collection of premium taxes under 33-2-311 until the collection infrastructure under the agreement is fully operational and the provisions of the agreement are fully implemented.

(3) If the commissioner has entered into an agreement under subsection (1) for multistate risks and the agreement provides that each participating state develop a single, blended tax rate for multistate risks:

(a) the provisions of 50-3-109 are not applicable to the collection of premium taxes;

(b) the single, blended tax rate must be 3.3% on premiums and must be computed in the manner provided in 33-2- 705(1) as to premiums of authorized insurers, except that amounts collected from the insured specifically for applicable state and federal taxes and in excess of the premium otherwise required are not considered to be part of the premium for the purposes of the computation; and

(c) the 3.3% tax collected must be distributed as follows:

(i) 2.75% must be considered premium taxes as provided in 33-2-705 and paid to the state general fund; and

(ii) 0.55% must be considered fire premium taxes as provided in 50-3-109 and paid to the state general fund.

(4) If a single-state risk is involved and Montana is the home state of the insured, the surplus lines transaction must be submitted to the commissioner and the commissioner shall collect the tax at the same rate and in the same manner as provided in 33-2-705.

(5) If the commissioner has entered into a cooperative or reciprocal agreement under subsection (1), the commissioner may contract with the designated clearinghouse to process multistate risks and allocate and distribute taxes and fees collected.

(6) As used in this section, "readily available data" means Montana-specific data, if any, used to rate a surplus lines insurance policy.

Section 18. Codification instruction. [Sections 3, 4, 16, and 17] are intended to be codified as an integral part of Title 33, chapter 2, part 3, and the provisions of Title 33, chapter 2, part 3, apply to [sections 3, 4, 16, and 17].

Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. [This act] is effective on passage and approval.

Section 21. Applicability. [This act] applies to any surplus lines insurance issued or renewed on or after July 1, 2011.

Approved May 6, 2011

CHAPTER NO. 351

[SB 351]

AN ACT REVISING LAWS RELATED TO MEDICAID MANAGED CARE CONTRACTS; ESTABLISHING AN ADVISORY COUNCIL; REQUIRING REVIEW OF REQUESTS FOR PROPOSALS AND PROPOSED CONTRACTS; AMENDING SECTIONS 33-1-102, 33-31-115, 53-6-116, 53-6-702, 53-6-704, 53-6-705, 53-6-707, AND 53-21-701, MCA; REPEALING SECTION 53-6-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Advisory council — duties. (1) There is an advisory council to review requests for proposals issued and contracts proposed to be awarded under this part.

(2) The advisory council consists of seven members appointed as follows:

(a) two members appointed by the speaker of the house of representatives, at least one of whom must be a health care provider;

(b) two members appointed by the president of the senate, at least one of whom must be a health care provider; and

(c) three members appointed by the governor, at least one of whom must be a health care provider.

(3) Members shall serve staggered, 3-year terms.

(4) When the department proposes to seek a medicaid waiver for managed care, the council shall conduct the following activities before the department issues a request for proposal and after it has selected a vendor but before a contract is awarded:

(a) hold a public hearing in the geographic area that would be affected by the program or contract in order to:

(i) educate medicaid recipients, health care providers, and the public residing in the area about the provisions of the proposed program or contract and the consumer's options; and

(ii) accept public comment about the proposed program or contract;

(b) submit a report of its findings related to the public comment process to the appropriate interim or legislative committee, the legislative auditor's office, and the department.

(5) The council shall meet according to a schedule adopted by a majority vote of the council.

(6) The council is attached to the department for administrative purposes only, and members are entitled to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503.

Section 2. Requests for proposals and contracts — review requirements — public notice and comment. (1) Before the department issues a request for proposals or awards a contract for the provision of services through a managed health care entity:

(a) the department shall meet the public notice, legislative presentation, and public comment requirements of 53-2-215;

(b) the legislative auditor's office and the state auditor's office, in consultation with the department, shall analyze the request for proposal and the proposed contract for:

(i) actuarial soundness;

(ii) network adequacy as provided for in Title 33, chapter 36, part 2; and

(iii) consumer choice; and

(c) within 60 days of receipt of the request for proposal and proposed contract, the legislative auditor's office and state auditor's office shall complete their analyses and publish the findings of their analyses.

(2) (a) Before the department may award a contract, it shall seek an independent analysis to verify that the potential vendor is able to comply with the goals of the proposed managed care program.

(b) The vendor shall pay the costs of the analysis.

Section 3. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs — service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations ~~or to managed care community networks, as defined in 53-6-702,~~ to the extent that the existence and operations of those organizations are governed by chapter 31 ~~or to the extent that the existence and operations of those networks are governed by Title 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6~~.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) Except as otherwise provided in Title 33, chapter 22, this code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to

separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) Except as otherwise provided in Title 33, chapter 22, this code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program.

(10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making of, proposal to make, and administration of a service contract.

(b) A "service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling. A service contract does not include motor club service as defined in 61-12-301.

(11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for the financial risk under the contract with the third party as provided in 7-34-103.

(b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or town, the entity is subject to the provisions of this code."

Section 4. Section 33-31-115, MCA, is amended to read:

"33-31-115. Applicability to managed health care entity. ~~(1) A managed health care entity, as defined in 53-6-702, is governed by the provisions of Title 53, chapter 6, part 7.~~

~~(2)~~*(1)* The department of public health and human services may limit the amount, scope, and duration of services provided by a managed health care entity under contract for programs established under Title 53. These services may be less than services required by this title.

(2) The delivery of programs of managed health care services established under Title 53 by a managed health care entity under contract with the department of public health and human services is exempt from the provisions of 33-31-301 and 33-31-321."

Section 5. Section 53-6-116, MCA, is amended to read:

"53-6-116. Medicaid managed care — capitated health care. (1) The department of public health and human services, in its discretion, may develop managed care and capitated health care systems for medicaid recipients.

(2) The department may contract with one or more persons for the management of comprehensive physical health services and the management of comprehensive mental health services for medicaid recipients. The department may contract for the provision of these services by means of a fixed monetary or capitated amount for each recipient.

(3) A managed care system is a program organized to serve the medical needs of medicaid recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

(4) The provision of medicaid services through managed care and capitated health care systems is not subject to the limitations provided in 53-6-104. The managed care or capitated health care system that is provided to a defined population of recipients may be based on one or more of the medical assistance services provided for in 53-6-101.

(5) The proposed systems, referred to in subsection (1), must be submitted to the legislative finance committee. The legislative finance committee shall review the proposed systems at its next regularly scheduled meeting and shall provide any comments concerning the proposed systems to the department.

(6) A managed care or capitated health care system, except for a primary care case management service, that requires for implementation a waiver from the centers for medicare and medicaid is subject to the provisions of Title 53, chapter 6, part 7."

Section 6. Section 53-6-702, MCA, is amended to read:

"53-6-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services.

(2) "Health maintenance organization" means a health maintenance organization as defined in 33-31-102.

~~(3) (a) "Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:~~

~~(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or~~

~~(ii) operates statewide or covers 20% or more of the medicaid population.~~

~~(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis or a PACE organization, as defined in 42 CFR 460.6, that has received a waiver under 33-31-201.~~

~~(4)~~*(3) (a)* "Managed health care entity" or "entity" means a health maintenance organization or ~~a managed care community network~~ *an insurer regulated under Title 33 that:*

(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include:

(i) a provider of health care services under a contract with the department on a fee-for-service basis;

(ii) a medicaid primary care case management service within the meaning of 42 CFR 438; or

(iii) a PACE organization, as defined in 42 CFR 460.6, that has received a waiver under 33-31-201.

~~(5)~~*(4)* "Program" means an element of the integrated health care system created by this part."

Section 7. Section 53-6-704, MCA, is amended to read:

"53-6-704. Different benefit packages. (1) The department may by rule provide for different benefit packages for different categories of persons enrolled in the program. Alcohol and substance abuse services, services for mental disorders, services related to children with chronic or acute conditions requiring longer-term treatment and followup, and rehabilitation care provided by a freestanding rehabilitation hospital or a rehabilitation unit may be excluded from a benefit package and those services may be made available through a separate delivery system. If a service is excluded from the program but made available in a separate delivery system by a managed *health* care entity, that managed *health* care entity is subject to this part. An exclusion does not prohibit the department from developing and implementing demonstration projects for categories of persons or services. Benefit packages for persons eligible for medical assistance under Title 53, chapter 6, parts 1 and 4, may be based on the requirements of those parts and must be consistent with the Title XIX of the Social Security Act. This part applies only to services purchased by the department.

(2) The program established by this part may be implemented by the department in various contracting areas at various times. The health care delivery systems and providers available under the program may vary throughout the state. Except as otherwise provided in a contract for mental health services *and subject to the public comment and review provisions of [sections 1 and 2]*, a licensed managed health care entity must be permitted to contract in any geographic area for which it has a sufficient provider network and that otherwise meets the requirements of the state contract."

Section 8. Section 53-6-705, MCA, is amended to read:

"53-6-705. Requirements for managed health care entities. (1) A managed health care entity that contracts with the department for the provision of services under the program shall comply with the requirements of this section for purposes of the program.

(2) The entity shall provide for reimbursement for health care providers for emergency care, as defined by the department by rule, that must be provided to its enrollees, including emergency room screening services and urgent care that it authorizes for its enrollees, regardless of the provider's affiliation with the managed health care entity. Health care providers must be reimbursed for emergency care in an amount not less than the department's rates for those medical services rendered by health care providers who are not under contract with the entity to enrollees of the entity.

(3) The entity shall maintain a network of health care providers that is sufficient in number and type to ensure that the services approved by the department for delivery to medicaid recipients covered by the entity are available without unreasonable delay as required under the network adequacy and quality assurance provisions of Title 33, chapter 36, and any rules promulgated under that chapter.

~~(3)~~*(4)* The entity shall provide that any health care provider affiliated with a managed health care entity may also provide services on a fee-for-service basis to department clients who are not enrolled in a managed health care entity.

~~(4)~~*(5)* The entity shall provide client education services as determined and approved by the department, including but not limited to the following services:

(a) education regarding appropriate use of health care services in a managed care system;

(b) written disclosure of treatment policies and any restrictions or limitations on health services, including but not limited to physician services, clinical laboratory tests, hospital and surgical procedures, prescription drugs and biologicals, and radiological examinations; and

(c) written notice that the enrollee may receive from another provider those medicaid-covered services that are not provided by the managed health care entity but that are the financial responsibility of the entity.

~~(5)~~*(6)* The entity shall provide that enrollees within its system will be informed of the full panel of health care providers. Contracts for the provision of services beyond 125 miles from the borders of Montana may not be entered into if services of comparable cost and quality are available within the state of Montana.

~~(6)~~*(7)* The entity may not discriminate in its enrollment or disenrollment practices among recipients of medical services or program enrollees based on health status.

~~(7)~~*(8)* For purposes of participation in the medicaid program, the entity shall comply with quality assurance and utilization review requirements established *in Title 33, chapter 36, and* by the department by rule.

~~(8)~~*(9)* The entity shall require that each provider meets the standards for accessibility and quality of care established by law. The department shall prepare an annual report regarding the effectiveness of the standards on ensuring access and quality of care to enrollees.

~~(9)~~*(10)* The entity shall maintain, retain, and make available to the department records, data, and information, in a uniform manner determined by the department, that ~~is~~ *are:*

(a) sufficient for the department*, the legislative auditor's office, and the state auditor's office* to monitor utilization, accessibility, and quality of care*;* and ~~that is~~

(b) consistent with accepted practices in the health care industry.

~~(10)~~*(11)* Except for health care providers who are prepaid, the entity shall pay all approved claims for covered services that are correctly completed and submitted to the entity within 30 days after receipt of the claim or receipt of the appropriate capitation payment or payments by the entity from the state for the month in which the services included on the claim were rendered, whichever is later. If payment is not made or mailed to the provider by the entity by the due date under this subsection, an interest penalty of 1% of any amount unpaid must be added for each month or fraction of a month after the due date until final payment is made. This part does not prohibit managed health care entities and health care providers from mutually agreeing to terms that require more timely payment.

~~(11)~~*(12)* The entity shall seek cooperation with community-based programs provided by local health departments, such as the women, infants, and children food supplement program, childhood immunization programs, health education programs, case management programs, and health screening programs.

~~(12)~~*(13)* The entity shall seek cooperation with community-based organizations, as defined by rule of the department, that may continue to operate under a contract with the department or a managed health care entity under this part to provide case management services to medicaid clients.

~~(13)~~*(14)* A managed health care entity that provides written notice pursuant to subsection ~~(4)(c)~~ *(5)(c)* to an enrollee of medicaid-covered services available from another provider is responsible for payment for those services by another provider.

(15) A managed health care entity may not begin operation before the approval of any necessary federal waivers and the completion of the review of an application submitted to the department. The department may charge the applicant an application review fee for the department's actual cost of review of the application. The fee must be adopted by rule by the department. Fees collected by the department must be deposited in an account in the special revenue fund to be used by the department to defray the cost of application review."

Section 9. Section 53-6-707, MCA, is amended to read:

"53-6-707. Payment reductions and adjustments — freedom to contract. (1) The department shall by rule establish a method to reduce its payments to managed health care entities to take the following into consideration:

(a) any adjustment payments paid to health care facilities under subsection (2)(b) to the extent that those payments or any part of those payments have been taken into account in establishing capitated rates under 53-6-705; and

(b) the implementation of methodologies to limit financial liability for managed health care entities under 53-6-705.

(2) For key services provided by a hospital *or nursing facility* that contracts with an entity, adjustment payments that are not included in capitated rates must be paid directly to the hospital *or nursing facility* by the department. Adjustment payments ~~may~~ include but ~~need not be~~ *are not* limited to:

(a) adjustment payments to disproportionate share hospitals as defined by department rule;

(b) perinatal center payments; ~~and~~

(c) payments for ~~capital,~~ direct medical education, indirect medical education, and certified registered nurse anesthetists*;*

(d) supplemental medicaid payments to hospitals made pursuant to 53-6-149; and

(e) supplemental medicaid payments to nursing facilities made pursuant to 15-60-211.

(3) For any hospital *or nursing facility* eligible for the adjustment payments described in this section, the department shall maintain, through the period ending June 30, 1996, reimbursement levels in accordance with statutes and rules in effect at the time the payments are made.

(4) The department may not assign an existing agreement with a medicaid provider to a managed health care entity. The managed health care entity shall enter into a new agreement with a provider in order for the provider to be considered a part of the managed health care entity's network of providers.

~~(4)~~*(5)* This part does not limit or otherwise impair the authority of the department to enter into a contract, negotiated pursuant to this part, with a managed health care entity, including a health maintenance organization, that provides for termination or nonrenewal of the contract without cause upon notice as provided in the contract and without a hearing. If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount,

scope, or duration of the medical services made available under the Montana medicaid program and managed care."

Section 10. Section 53-21-701, MCA, is amended to read:

"53-21-701. Mental health managed care allowed — contract. (1) The department of public health and human services may contract with one or more persons for the management of comprehensive mental health services for medicaid recipients, as provided in 53-6-116, and for persons in households not eligible for medicaid with family income that does not exceed 160% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department shall determine whether or not a potential contractor that will serve medicaid enrollees is a managed *health* care ~~community network~~ *entity*, as defined in 53-6-702, prior to entering into a contract and shall ensure that each contractor that qualifies as a managed *health* care ~~community network~~ *entity* complies with the provisions of Title 53, chapter 6, part 7, for the medicaid portion of the program.

(2) A managed care system is a program organized to serve the mental health needs of recipients in an efficient and cost-effective manner by managing the receipt of comprehensive mental health care and services for a geographical or otherwise defined population of recipients through appropriate health care professionals. The management of mental health care services must provide for services in the most cost-effective manner through coordination and management of the appropriate level of care and appropriate level of services.

(3) The department may enter into one or more contracts with a managed health care entity~~, as defined in 53-6-702,~~ for the administration or delivery of mental health services. These contracts may be based upon a fixed monetary amount or a capitated amount for each individual, and a contractor may assume all or a part of the financial risk of providing and making payment for services to a set population of eligible individuals if the contractor has complied with *Title 33, chapter 31, and* Title 53, chapter 6, part 7. The department may require the participation of recipients in managed care systems based upon geographical, financial, medical, or other factors that the department may determine are relevant to the development and efficient operation of the managed care systems. Any contract for delivery of mental health care services that includes hospitalization or physician services, or both, must include a provision that, prior to final award of a contract, a successful bidder that serves adults shall enter into an agreement regarding the Montana state hospital and the Montana mental health nursing care center that is consistent with 53-1-402, 53-1-413, and 90-7-312 and that includes financial incentives for the development and use of community-based services, rather than the use of the state institutional services.

(4) The department shall formally evaluate contract performance with regard to specific outcome measures. The department shall explicitly identify performance and outcome measures that contractors are required to achieve in order to comply with contract requirements and to continue the contract. The contract must provide for progressive intermediate sanctions that may be imposed for nonperformance. The contract performance evaluation must include a section concerning contract enforcement, including any sanctions imposed along with the rationale for not imposing a sanction when the imposition is authorized. The evaluation must be performed at least annually."

Section 11. Repealer. The following section of the Montana Code Annotated is repealed:

53-6-703. Managed care community network.

Section 12. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 6, part 7, and the provisions of Title 53, chapter 6, part 7, apply to [sections 1 and 2].

Section 13. Effective date. [This act] is effective on passage and approval.

Section 14. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011.

Approved May 6, 2011

CHAPTER NO. 352

[SB 354]

AN ACT ADOPTING THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT; CLARIFYING APPLICABILITY OF UNSWORN DECLARATIONS; PROVIDING FOR VALIDATION OF UNSWORN DECLARATIONS; PROVIDING A FORM FOR UNSWORN DECLARATIONS; AND CLARIFYING THE LEGAL AUTHORITY WITH RESPECT TO ELECTRONIC SIGNATURES UNDER THIS ACT WITH RESPECT TO FEDERAL LAW.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 8] may be cited as the "Uniform Unsworn Foreign Declarations Act".

Section 2. Definitions. In [sections 1 through 8]:

(1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) "Law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

Section 3. Applicability. [Sections 1 through 8] apply to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. [Sections 1 through 8] do not apply to a declaration by a declarant who is physically located

on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Section 4. Validity of unsworn declaration. (1) Except as otherwise provided in subsection (2), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of [sections 1 through 8] have the same effect as a sworn declaration.

(2) [Sections 1 through 8] do not apply to:

(a) a deposition;

(b) an oath of office;

(c) an oath required to be given before a specified official other than a notary public;

(d) a declaration to be recorded pursuant to Title 70; or

(e) an oath required for a self-proved will under 72-2-524.

Section 5. Required medium. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

Section 6. Form of unsworn declaration. An unsworn declaration under [sections 1 through 8] must be in substantially the following form:

I declare under penalty of perjury under the law of Montana that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the ..... (date) day of ..... (month), ... (year), at .....(city or other location, and state),..... (country).

..... (printed name)

..... (signature)

Section 7. Uniformity of application and construction. In applying and construing [sections 1 through 8], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 8. Relation to Electronic Signatures in Global and National Commerce Act. [Sections 1 through 8] modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 9. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 26, chapter 1, and the provisions of Title 26, chapter 1, apply to [sections 1 through 8].

Approved May 6, 2011

CHAPTER NO. 353

[SB 411]

AN ACT REVISING THE UNIFORM PENALTY ASSESSMENTS ON DELINQUENT TAXES; AMENDING THE WAIVER OF INTEREST; PROVIDING THAT THE PENALTIES FOR SUBSTANTIAL UNDERSTATEMENT OF A TAX OR FOR FILING A FRAUDULENT OR

FRIVOLOUS RETURN OR REPORT ARE SIMILAR TO FEDERAL PENALTIES; AMENDING SECTIONS 15-1-206 AND 15-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-206, MCA, is amended to read:

"15-1-206. Waiver of penalties — interest. (1) The department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

(2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion, waive interest not to exceed ~~$100 due upon the tax~~ *$500 due per tax period.* ~~.~~ *When the department enters into a payment plan with a taxpayer that allows the taxpayer to make installment payments of delinquent taxes, interest, and penalties, the department may agree to waive an additional $100 of interest per tax period if the taxpayer makes each payment required by the plan on or before the due date of the payment and complies in a timely manner with all other terms of the payment plan.*"

Section 2. Section 15-1-216, MCA, is amended to read:

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments. (1) ~~A~~ *(a) Subject to subsection (1)(b), a* person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of ~~$50 or the amount of the tax due, whichever is less~~ *5% of the tax due for each month or fraction of a month during which there is a failure to file the return or report in an amount up to 25% of the tax due. The late filing penalty runs for the period up to the date the department actually receives the late return or report. The penalty is computed only on the net amount of tax due as of the original due date, if any, on the return or report after credit has been given for amounts paid through withholding, estimated tax payments, and other credits claimed on the return.*

(b) A penalty imposed under subsection (1)(a) must be reduced by the amount of the penalty imposed under subsection (2)(a) or (2)(b).

(2) (a) Except as provided in ~~subsection~~ *subsections* (2)(b) *and (2)(d)*, a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) ~~A~~ *Except as provided in subsection (2)(d), a* person who fails to pay a tax when due under *Title 15,* chapter 30, part 25, *Title 15,* chapter 53, *Title 15,* chapter 65, or *Title 15,* chapter 68*,* must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(d) A penalty may not be imposed under subsection (2)(a) or (2)(b) on the amount of unpaid tax if the taxpayer demonstrates there is reasonable cause for the unpaid amount and the taxpayer acted in good faith with respect to the unpaid amount.

(3) (a) Subject to subsection (3)(b), a person who makes a substantial understatement of tax imposed under Title 15 must be assessed a substantial

understatement penalty in an amount equal to 20% of the understatement. As used in this subsection (3), "understatement" means the amount of the tax required to be shown on the return for the tax year minus the amount of tax imposed that is shown on the return. For purposes of this subsection (3):

(i) there is a substantial understatement of tax imposed under Title 15, chapter 30, if the understatement is the greater of 10% of the amount of tax required to be shown on the return or $3,000; and

(ii) there is a substantial understatement of tax imposed for all other chapters under Title 15 if the understatement exceeds the lesser of:

(A) 10% of the amount of tax required to be shown on the return if the understatement is greater than $10,000; or

(B) $500,000.

(b) The amount of substantial understatement must be reduced by the amount of the understatement that is attributable to:

(i) the tax treatment of any item by the taxpayer if there is or was substantial authority for the treatment; or

(ii) any item if the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis for the tax treatment of the item by the taxpayer.

~~(3)~~*(4)* A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return *or report as required under Title 15* when due or fails to file a return *or report* within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of ~~not less than $1,000 or more than $10,000~~ *15% a month, up to 75% of the tax due as determined by the department*. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(5) A person who files a fraudulent return or report under Title 15 is liable for an additional penalty of 75% of the tax due on the underpayment of tax attributable to the fraudulent amount reported on the return or report. The department may bring an action in the name of the state to recover the penalty, interest, and any delinquent taxes.

(6) A person who files a frivolous return or report under Title 15 is liable, in addition to any other penalty imposed, for a penalty of $2,500. A frivolous return or report is one that is filed by a person that omits information necessary to determine the taxpayer's tax liability, shows a substantially incorrect tax, is based upon a frivolous position, or is based upon the taxpayer's action to impede collection of taxes. The department may bring an action in the name of the state to recover the penalty, interest, and any delinquent taxes.

~~(4)~~*(7)* (a) Interest on taxes not paid when due must be assessed by the department. The department shall determine the interest ~~rates~~ *rate* established under subsection ~~(4)(a)(i)~~ *(7)(a)(i)* for each calendar year by rule subject to the conditions of this subsection ~~(4)(a)~~ *(7)(a)*. Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12% *a year*.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

~~(5)~~*(8)* (a) Except as provided in subsection ~~(5)(b)~~ *(8)(b)*, this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and the former 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

~~(6)~~*(9)* Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

~~(7)~~*(10)* Penalty and interest must be calculated and assessed commencing with the due date of the return.

~~(8)~~*(11)* Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

~~(9)~~*(12)* Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection ~~(4)(a)(i)~~ *(7)(a)(i)*. (Bracketed language in subsection ~~(5)(a)~~ *(8)(a)* terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)"

Section 3. Coordination instruction. If Senate Bill No. 199 is not passed and approved, then [this act] is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to tax periods beginning after December 31, 2011.

Approved May 6, 2011

CHAPTER NO. 354

[SB 417]

AN ACT CREATING THE MILITARY AREA COMPATIBILITY ACT; ALLOWING A GOVERNING BODY TO DESIGNATE MILITARY AFFECTED AREAS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR MILITARY AFFECTED AREA REGULATIONS; REQUIRING MAPS AND LEGAL DESCRIPTIONS OF THE MILITARY AFFECTED AREA; REQUIRING A PUBLIC HEARING BEFORE DESIGNATION OF A MILITARY AFFECTED AREA; ALLOWING CREATION OF A JOINT REGULATION BOARD; PROVIDING FOR PRIOR NONCONFORMING USES IN A MILITARY AFFECTED AREA; ALLOWING REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING THE REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS; PROVIDING FOR A VARIANCE FROM THE REGULATIONS; AND PROVIDING PENALTIES AND REMEDIES FOR VIOLATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 13] may be cited as the "Military Area Compatibility Act".

Section 2. Legislative findings — purpose. The legislature finds and declares that:

(1) the ability of the United States military to train and operate effectively in Montana is crucial to the nation's defense;

(2) increasing development pressures in and around existing military facilities and training areas represent a potential threat to the continued viability of military missions in Montana;

(3) local governments should be empowered to implement land use policies designed to protect existing military missions from encroachment and encourage expansion of military missions in Montana; and

(4) it is the purpose of [sections 1 through 13] to promote public health, safety, and general welfare by the delineation of military affected areas and by granting local governments the ability to develop regulations to ensure that surrounding land uses are compatible with uses in military affected areas.

Section 3. Military affected areas — definitions. For the purposes of [sections 1 through 13], the following definitions apply:

(1) "Airport" has the meaning provided in 67-1-101.

(2) "Governing body" has the meaning provided in 67-7-103.

(3) (a) "Military affected area" means land used for military purposes or in close proximity to military facilities that is directly affected or that will be directly affected by military uses.

(b) The term does not mean an area over which military aircraft operate when no other components of military facilities or military uses exist.

(4) "Military facilities" and "military uses" include but are not limited to military airports, military installations, intercontinental ballistic missile alert facilities or launch control centers, missile locations, access roads to missiles or missile-related facilities, and sites formerly used for military training that may be contaminated with hazardous wastes or explosive ordnance.

(5) "YDNL" has the meaning provided in 67-1-101.

Section 4. Designation of military affected areas — public hearing required — joint regulation board authorized. (1) A governing body of a political subdivision within which military operations occur may, in consultation with the appropriate military authority, designate a military affected area and may adopt, administer, and enforce military affected area regulations.

(2) The designation of a military affected area must be accompanied by maps and legal descriptions of the military affected area.

(3) (a) Before a governing body designates a military affected area and adopts or amends regulations governing the military affected area, the governing body shall hold at least one public hearing.

(b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the governing body is a city commission, a town council, or the commissioners of a municipal airport authority.

(4) If a military affected area encompasses land within the boundaries of more than one political subdivision, the governing bodies of the political

subdivisions may by ordinance or resolution create a joint military affected area regulation board. The joint board must have two members appointed by the governing body of each political subdivision participating in its creation, and a presiding officer must be elected by a majority of the members appointed. The joint board shall consider the zoning regulations and ordinances of each affected political subdivision in developing its recommendations, but the board's recommendations are not binding on the governing bodies of any of the affected political subdivisions.

(5) A governing body may not designate land that is more than 1,200 feet from a launch control center or missile location as part of a military affected area.

Section 5. Military affected area regulations — contents. (1) Regulations adopted for the military affected area must be reasonable, be designed to promote the public health, safety, and general welfare, and protect and facilitate the military missions executed within the military affected area. At a minimum, these regulations must give consideration to:

(a) the safety of persons physically present in a military affected area and the persons and property in the vicinity of the area;

(b) the character of the military operations conducted or expected to be conducted within the area;

(c) the nature of the terrain;

(d) the future development of the military affected area;

(e) United States department of defense recommendations for the safety zones, noise contours, and flight path restrictions for the appropriate type of military operation and the compatibility of surrounding land uses with the recommendations; and

(f) existing and potential future uses of the land proposed to be included in a military affected area.

(2) Military affected area regulations must be limited to addressing current and known future military uses and may be adopted only to:

(a) limit electromagnetic emissions that may interfere with military operations;

(b) describe the military affected area by referencing maps other than those required under [section 4(2)] and describing existing hazards and natural terrain that intrude into the military affected area;

(c) designate and describe zones within the military affected area, along with the height limitations for structures and trees within each zone, considering local conditions and needs;

(d) show the contours for decibel levels of 65 YDNL or greater on the maps that designate a military affected area if a study has been conducted pursuant to United States department of defense regulations and require that information to be considered before any building may occur within the military affected area;

(e) specify the permitted and conditional land uses within each zone of the military affected area by addressing:

(i) residences, schools, hospitals, day-care centers, or other concentrations of people, indoors or outdoors, that are incompatible with activities within the military affected area;

(ii) land uses that are incompatible with the decibel levels described in subsection (2)(d); and

(iii) other land uses that are incompatible with United States department of defense recommendations regarding compatible use of land within a military affected area.

Section 6. Regulations relative to zoning ordinances. (1) Subject to subsection (3), if a governing body has adopted a zoning ordinance or resolution, any regulations adopted under [sections 1 through 13] may be made a part of the zoning ordinance or resolution and may be administered and enforced in connection with it.

(2) If a political subdivision has a planning board, zoning commission, or joint military affected area board, a governing body may request the assistance of those boards or commissions in designating a military affected area or adopting, amending, or repealing military affected area regulations.

(3) When a conflict exists between the regulations adopted pursuant to [sections 1 through 13] and any zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the more stringent limitation or requirement prevails.

Section 7. Prior nonconforming uses. (1) All regulations adopted under [sections 1 through 13] must be reasonable and may not require the removal or alteration of any structure or require cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those structures or uses must be treated as prior nonconforming structures or uses that may remain or continue.

(2) A nonconforming structure or use that is destroyed or substantially damaged by fire, flood, or other natural disaster may not be restored as a nonconforming structure or use unless a variance is issued by the appeals board provided for in [section 10] or unless the restoration occurs within 24 months of the damage having occurred and the resulting structure or use occupies the same physical footprint and is used for the same purpose as the original nonconforming structure or use. A nonconforming structure or use is considered to be substantially damaged when 80% or more of a structure is damaged or destroyed.

(3) The regulations may require the owner of structures to permit the political subdivision, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a hazard in the vicinity of the military affected area.

Section 8. Permit system. (1) The regulations adopted pursuant to [sections 1 through 13] must provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering or replacing existing structures within the military affected area.

(2) A permit may not be granted that would allow the establishment of an incompatible use or that would allow a nonconforming use or structure to become a greater hazard or cause greater incompatibility with the military affected area.

Section 9. Enforcement. The governing body or its designated agent or agency is responsible for enforcing the regulations adopted pursuant to [sections 1 through 13]. The regulations must provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may be an existing employee of the local government.

Section 10. Appeals. (1) The governing body that designated the military affected area shall act as a military affected area appeals board or appoint a military affected area appeals board that functions in the same manner as a

board of adjustment provided for in Title 76, chapter 2. If the governing body appoints a military affected area appeals board, the board must have at least three members.

(2) The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county or a military affected area appeals board appointed by that governing body and the provisions of 76-2-323 and 76-2-325 through 76-2-328 apply to the governing body of a municipality or a military affected area appeals board appointed by that governing body when considering grievances relating to regulations, variances, or permits.

(3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the military affected area appeals board, in which case the terms of the members for the purposes of [sections 1 through 13] are concurrent with their terms as members of the board of adjustment.

Section 11. Variance. (1) A person intending to erect or increase the height of a structure or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to [sections 1 through 13] may apply to the governing body or an enforcement officer appointed for this purpose by the governing body for a variance from the regulations.

(2) If an enforcement officer has been appointed by the governing body, the decision of the officer is final unless it is appealed to either the governing body or the military affected area appeals board, if one exists.

(3) A variance must be granted when a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to military missions.

(4) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the military affected area and when the noise or vibrations from normal and anticipated normal military operations would not be likely to cause damage to structures.

(5) A variance granted under this section may require the owner of a structure to allow the political subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a military affected area hazard.

(6) A person who builds a structure pursuant to a variance from the military affected area regulations or who takes or buys property in a military affected area for which a variance has been granted is considered to be aware that the military affected area existed before the variance was granted and that normal and anticipated normal military operations may result in noise, vibrations, and fumes being projected over the property. A person using a structure built pursuant to a variance may not seek damages from a governing body, a local government, or the federal government for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal military operations.

Section 12. Penalty. A person who violates the provisions of [sections 1 through 13] or the regulations adopted under [section 5] is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of $100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of $500 pursuant to 45-2-104.

Section 13. Injunction. A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of [sections 1 through 13] or the regulations adopted pursuant to [sections 1 through 13].

Section 14. Codification instruction. [Sections 1 through 13] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 13].

Approved May 6, 2011

CHAPTER NO. 355

[SB 429]

AN ACT REVISING LAWS ON REINSTATEMENT OF A LIMITED LIABILITY COMPANY FOLLOWING ADMINISTRATIVE DISSOLUTION; AMENDING SECTION 35-8-912, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-8-912, MCA, is amended to read:

"35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application. The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company's name satisfies the requirements of 35-8-103;

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid *unless a limited liability company has only one member and has not elected to be taxed as a corporation*; and

(e) include all annual reports not yet filed with the secretary of state.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred."

Section 2. Section 35-8-912, MCA, is amended to read:

"35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved *under the provisions of 35-8-209* may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution *to restore its right to carry on business in this state and to exercise all its privileges and immunities*. ~~The applicant shall file an official application. The application must~~ *A limited liability company applying for reinstatement shall submit to the secretary of state an official application, executed by a person who was a member or manager at the time of dissolution, setting forth*:

~~(a) recite the name of the company and the effective date of its administrative dissolution;~~

~~(b) state that the ground for dissolution either did not exist or has been eliminated;~~

~~(c) state that the company's name satisfies the requirements of 35-8-103;~~

~~(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and~~

~~(e) include all annual reports not yet filed with the secretary of state.~~

(a) the name and business mailing address of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(2) The limited liability company shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid unless a limited liability company has only one member and has not elected to be taxed as a corporation; and

(b) all annual reports not yet filed with the secretary of state.

~~(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.~~

~~(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.~~

(3) When all requirements of subsections (1) and (2) are met and the secretary of state reinstates the limited liability company, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand and receipt of the specified fee, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(4) The secretary of state may not order a reinstatement if 5 years have elapsed since the date of dissolution.

(5) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was administratively dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization."

Section 3. Coordination instruction. If Senate Bill No. 63 and [this act] are both passed and approved, then [section 18 of Senate Bill No. 63] amending 35-8-912 is void.

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective October 1, 2011.

Section 5. Termination. [Section 1] terminates September 30, 2011.

Approved May 6, 2011

CHAPTER NO. 356

[HB 132]

AN ACT SIMPLIFYING CLASSIFICATION AND REPORTING OF VALUES ASSIGNED TO TAXABLE PROPERTY; UPDATING THE DEFINITION OF "ANIMAL UNIT MONTHS" TO COMPLY WITH CURRENT GRAZING PRACTICES; ELIMINATING OBSOLETE LANGUAGE RELATING TO AGRICULTURAL AND FOREST LAND; AND AMENDING SECTIONS 15-7-101, 15-7-102, 15-7-103, 15-7-139, 15-7-201, AND 15-44-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-101, MCA, is amended to read:

"15-7-101. Classification and appraisal — duties of ~~the~~ department of revenue. (1) It is the duty of the department of revenue to accomplish the following:

(a) the classification of all taxable lands;

(b) the appraisal of all taxable city and town lots;

(c) the appraisal of all taxable rural and urban improvements.

(2) A record ~~thereof~~ *of classifications and appraisals under subsection (1)* must be kept upon ~~such~~ *the* maps, plats, and forms and entered in ~~such~~ *the* books of record ~~as may be~~ prescribed by the department. ~~Such~~ *The* maps, plats, forms, and books of record ~~shall be~~ *are* official records of the state. A certified copy of all ~~such~~ records ~~as may be desired shall~~ *requested must* be furnished to the department.

(3) When the department uses an appraisal method that values land and improvements as a unit, including the comparable sales method for residential condominiums or the income method for commercial property, the department shall establish a combined appraised value of land and improvements.

~~(3)~~*(4)* It ~~shall be~~ *is* the duty of the department to maintain current the classification of all taxable lands and appraisal of city and town lots and rural and urban improvements, as provided for herein."

Section 2. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an

annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under 15-6-222 or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year; and

(iii) a statement that the notice is not a tax bill.

(d) When the department uses an appraisal method that values land and improvements as a unit, including the comparable sales method for residential condominiums or the income method for commercial property, the notice must contain a combined appraised value of land and improvements.

~~(d)~~*(e)* Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been

determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 3. Section 15-7-103, MCA, is amended to read:

"15-7-103. Classification and appraisal — general and uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 ~~through 15-7-103~~*, 15-7-102, and this section* by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands must be classified according to their use or uses.

(3) Land classified as agricultural land or forest land must be subclassified ~~and graded within each class~~ according to soil *type* and productive capacity. ~~In the classification work, use must be made of soil surveys and maps and all other pertinent available information.~~ *In the classification work, use must be made of soil surveys and maps and all other pertinent available information.*

~~(3)~~*(4)* All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

~~(4)~~*(5)* All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

~~(5)~~*(6)* In any periodic revaluation of taxable property completed under the provisions of 15-7-111, all property classified in 15-6-134 must be appraised on

the taxable portion of its market value in the same year. The department shall publish a rule specifying the year used in the appraisal.

~~(6)~~*(7)* All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land, house, or other improvements in which they are located. In no event may the sewage disposal or domestic water supply systems be included twice by including them in the valuation and assessing them separately."

Section 4. Section 15-7-139, MCA, is amended to read:

"15-7-139. Requirements for entry on property by property valuation staff employed by department — authority to estimate value of property not entered — rules. (1) Subject to the conditions and restriction of this section, the provisions of 45-6-203 do not apply to property valuation staff employed by the department and acting within the course and scope of the employees' official duties.

(2) A person qualified under subsection (1) may enter private land to appraise or audit property for property tax purposes.

(3) (a) No later than November 30 of each year, the department shall publish in a newspaper of general circulation in each county a notice that the department may enter property for the purpose of appraising or auditing property.

(b) The published notice must indicate:

(i) that a landowner may require that the landowner or the landowner's agent be present when the person qualified in subsection (1) enters the land to appraise or audit property;

(ii) that the landowner shall notify the department in writing of the landowner's requirement that the landowner or landowner's agent be present; and

(iii) that the landowner's written notice must be mailed to the department at an address specified and be postmarked not more than 30 days following the date of publication of the notice. The department may grant a reasonable extension of time for returning the written notice.

(4) The written notice described in subsection (3)(b)(ii) must be legible and include:

(a) the landowner's full name;

(b) the mailing address and property address; and

(c) a telephone number at which an appraiser may contact the landowner during normal business hours.

(5) When the department receives a written notice as described in subsection (4), the department shall contact the landowner or the landowner's agent to establish a date and time for entering the land to appraise or audit the property.

(6) If a landowner or the landowner's agent prevents a person qualified under subsection (1) from entering land to appraise or audit property or fails or refuses to establish a date and time for entering the land pursuant to subsection (5), the department shall estimate the value of the real and personal property located on the land.

(7) A county tax appeal board and the state tax appeal board may not adjust the estimated value of the real or personal property determined under subsection (6) unless the landowner or the landowner's agent:

(a) gives permission to the department to enter the land to appraise or audit the property; or

(b) provides to the department and files with the county tax appeal board or the state tax appeal board an appraisal of the property conducted by an appraiser who is certified by the Montana board of real estate appraisers. The appraisal must be conducted in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403. The appraisal must be conducted within 1 year of the reappraisal base year provided for in 15-7-103~~(5)~~*(6)* and must establish a separate market value for each improvement and the land.

(8) A person qualified under subsection (1) who enters land pursuant to this section shall carry on the person identification sufficient to identify the person and the person's employer and shall present the identification upon request.

(9) The authority granted by this section does not authorize entry into improvements, personal property, or buildings or structures without the permission of the owner or the owner's agent.

(10) Vehicular access to perform appraisals and audits is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(11) The department shall adopt rules that are necessary to implement 15-7-140 and this section. The rules must, at a minimum, establish procedures for granting a reasonable extension of time for landowners to respond to notices from the department."

Section 5. Section 15-7-201, MCA, is amended to read:

"15-7-201. Legislative intent — value of agricultural property. (1) Because the market value of many agricultural properties is based upon speculative purchases that do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land must be classified according to its use, which classifications include but are not limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land must be subclassified by ~~production categories~~ *productive capacity*. ~~Production categories are~~ *Productive capacity is* determined ~~from the productive capacity of the land~~ based on yield.

(4) In computing the agricultural land valuation schedules to take effect on the date when each revaluation cycle takes effect pursuant to 15-7-111, the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where:

(a) V is the per-acre productive capacity value of agricultural land in each ~~land use and production category~~ *subclass*;

(b) I is the per-acre net income of agricultural land in each ~~land use and production category~~ *subclass* and is to be determined as provided in subsection (5); and

(c) R is the capitalization rate and, unless the advisory committee recommends a different rate and the department adopts the recommended capitalization rate by rule, is equal to 6.4%. This capitalization rate must remain in effect until the next revaluation cycle.

(5) (a) Net income must be determined separately ~~in each land use based on production categories~~ *for each subclass*.

(b) Net income must be based on commodity price data, which may include grazing fees, crop and livestock share arrangements, cost of production data, and water cost data for the base period using the best available data.

(i) Commodity price data and cost of production data for the base period must be obtained from the Montana Agricultural Statistics, the Montana crop and livestock reporting service, and other sources of publicly available information if considered appropriate by the advisory committee.

(ii) Crop share and livestock share arrangements are based on typical agricultural business practices and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs, energy costs of irrigation, and, unless the advisory committee recommends otherwise and the department adopts the recommended cost by rule, a base water cost of $15 for each acre of irrigated land. Total allowable water costs may not exceed $50 for each acre of irrigated land. Labor and energy costs must be determined as follows:

(A) Labor costs are $5 an acre for pivot sprinkler irrigation systems; $10 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and $15 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in the energy cost base year, which is the calendar year immediately preceding the year specified by the department in 15-7-103~~(5)~~*(6)*. By July 1 of the year following the energy cost base year, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in that energy cost base year. In the event that no energy costs were incurred in the energy cost base year, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in the energy cost base year.

(c) The base crop for valuation of irrigated land is alfalfa hay adjusted to 80% of the sales price, and the base crop for valuation of nonirrigated land is spring wheat. The base unit for valuation of grazing lands is animal unit months ~~(AUM)~~, defined as the average monthly requirement of pasture forage to support a ~~1,000-pound~~ *1,200-pound* cow with a calf or its equivalent.

(d) Unless the advisory committee recommends a different base period and the department adopts the recommended base period by rule, the base period used to determine net income must be the most recent 7 years for which data is available prior to the date the revaluation cycle ends. Unless the advisory committee recommends a different averaging method and the department adopts the recommended averaging method by rule, data referred to in subsection (5)(b) must be averaged, but the average must exclude the lowest and highest yearly data in the period.

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The governor shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics. The advisory committee shall include one member of the Montana state university-Bozeman, college of agriculture, staff. The advisory committee shall:

(a) compile and review data required by subsections (4) and (5);

(b) recommend to the department any adjustments to data or to landowners' share percentages if required by changes in government agricultural programs, market conditions, or prevailing agricultural practices;

(c) recommend appropriate base periods and averaging methods to the department;

(d) evaluate the appropriateness of the capitalization rate and recommend a rate to the department;

(e) verify for each class *and subclass* of land that the income determined in subsection (5) reasonably approximates that which the average Montana farmer or rancher could have attained; and

(f) recommend agricultural land valuation schedules to the department. With respect to irrigated land, the recommended value of irrigated land may not be below the value that the land would have if it were not irrigated."

Section 6. Section 15-44-103, MCA, is amended to read:

"15-44-103. Legislative intent — value of forest lands — valuation zones. (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices, and to encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions of this section.

(2) The forest productivity value of forest land must be determined by:

(a) capitalizing the value of the mean annual net wood production at the culmination of mean annual increment plus other agriculture-related income, if any; less

(b) annualized expenses, including but not limited to the establishment, protection, maintenance, improvement, and management of the crop over the rotation period.

(3) To determine the forest productivity value of forest lands, the department shall:

(a) divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) establish a uniform system of forest land classification that takes into consideration the productive capacity of the site to grow forest products and furnish other associated agricultural uses.

(4) In computing the forest land *productivity* valuation ~~schedules~~ for each forest valuation zone, the department shall determine the productive capacity value of all forest lands in each forest valuation zone using the formula V = I/R, where:

(a) V is the per-acre forest productivity value of the forest land;

(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula I = (M x SV) + AI - C, where:

(i) I is the per-acre net income;

(ii) M is the mean annual net wood production;

(iii) SV is the stumpage value;

(iv) AI is the per-acre agriculture-related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate determined by the department as provided in subsection (6).

(5) Net income must:

(a) be calculated for each year of a base period, which is the most recent 5-year period for which data is available;

(b) be based on a rolling average of stumpage value of timber harvested within the forest valuation zone and on the associated production cost data for the base period from sources considered appropriate by the department; and

(c) include agriculture-related net income for the same time period as the period used to determine average stumpage values.

(6) The capitalization rate must be calculated for each year of the base period and is the average capitalization rate determined by the department after consultation with the forest lands taxation advisory committee, plus the effective tax rate. The capitalization rate must be adopted by rule. However, the capitalization rate for each year of the base period for tax years 2009 through 2014 may not be less than 8%.

(7) The effective tax rate must be calculated for each year of the base period by dividing the total estimated tax due on forest lands subject to the provisions of this section by the total forest value of those lands.

(8) For the purposes of this section, if forest service sales are used in the determination of stumpage values, the department shall take into account purchaser road credits.

(9) In determining the forest productivity value of forest lands and in computing the forest land valuation ~~schedules~~, the department shall use information and data provided by the university of Montana-Missoula.

(10) (a) There is a forest lands taxation advisory committee consisting of:

(i) four members with expertise in forest matters, one appointed by the majority leader of the senate, one by the minority leader of the senate, one by the majority leader of the house of representatives, and one by the minority leader of the house of representatives; and

(ii) three members appointed by the governor, one who is an industrial forest landowner, one who is a nonindustrial forest landowner, and one who is a county commissioner.

(b) The terms of the members expire on June 30 of the first year of each reappraisal cycle.

(c) The advisory committee shall:

(i) review data required by subsections (2) through (6), (8), and (9), including data on productivity value, stumpage value, wood production, capitalization rate, net income, and agriculture-related income;

(ii) recommend to the department any adjustments to data if required by changes in government forest land programs, market conditions, or prevailing forest lands practices;

(iii) recommend appropriate base periods and averaging methods to the department;

(iv) verify for each forest valuation zone and forest land classification *and subclassification* under subsection (3) that the income determined in subsection (5) reasonably approximates that which the average Montana forest landowner could have attained; and

(v) recommend forest land valuation ~~schedules~~ *techniques* to the department."

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 9, 2011

CHAPTER NO. 357

[HB 258]

AN ACT ADDING THE DEFINITION OF "DAY VISITOR" AS A CATEGORY OF PERSON WHO VISITS A GUEST RANCH AND MAY BE SERVED FOOD; EXEMPTING A GUEST RANCH THAT SERVES FOOD TO DAY VISITORS FROM THE DEFINITION OF A "FOOD SERVICE ESTABLISHMENT"; AMENDING SECTIONS 50-50-102 AND 50-51-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) "Consumer" means a person who is a member of the public, takes possession of food, is not operating an establishment, and does not offer the food for resale.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a retail food manufacturing establishment, meat market, food service establishment, perishable food dealer, or water hauler.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.

(b) The term does not include:

(i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers;

(ii) a private organization serving food only to its members;

(iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests; or

(iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests *and day visitors*.

(8) "Local board of health" means a county, city, city-county, or district board of health.

(9) "Local health officer" means a county, city, city-county, or district health officer, appointed by the local board of health, or the health officer's authorized representative.

(10) "Meat market" means an operation and buildings or structures in connection with it used to process, store, or display meat or meat products for retail sale to the public or for human consumption.

(11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(12) "Perishable food dealer" means an operation that is in the business of purchasing and selling perishable food to the public at retail.

(13) "Person" means a person, partnership, corporation, association, cooperative group, the state or a political subdivision of the state, or other entity.

(14) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(15) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (15)(a).

(16) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

(17) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.

(18) "Retail" means the provision of food directly to the consumer.

(19) (a) "Retail food manufacturing establishment" means an operation and the buildings or structures used to manufacture or prepare food for sale or human consumption at retail.

(b) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products.

(20) (a) "Water hauler" means a person engaged in the business of transporting water for human consumption and use and that is not regulated as a public water supply system as provided in Title 75, chapter 6.

(b) The term does not include a person engaged in the business of transporting water for human consumption that is used for individual family households and family farms and ranches."

Section 2. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18.

(2) (a) "Day visitor" means a guest whose primary purpose on the guest ranch is to participate in recreational activities regularly provided by the guest ranch for a fee including but not limited to hunting, horseback riding, working cattle, hiking, biking, snowmobiling, or fishing, who may be served food incidental to the activity, and who does not stay overnight.

(b) The term does not include persons attending weddings, parties, large group functions, or other meals not related to the recreational activities described in subsection (2)(a) and who may not be served food unless the guest ranch or other entity serving the food has a license issued pursuant to 50-50-201.

~~(2)~~*(3)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~*(4)* "Establishment" means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

~~(4)~~*(5)* "Guest ranch" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides *recreational activities that include but are not limited to* hunting, horseback riding, fishing, *hiking, biking, snowmobiling,* or a working cattle ranch experience to its guests *and day visitors*; and

(d) is a small establishment or a seasonal establishment.

~~(5)~~*(6)* "Hotel" or "motel" includes:

(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, or public lodginghouse;

(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

~~(6)~~*(7)* "Outfitting and guide facility" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101; and

(d) is a small establishment or a seasonal establishment.

~~(7)~~*(8)* "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a bed and breakfast, hotel, motel, boardinghouse, tourist home, guest ranch, outfitting and guide facility, or roominghouse.

~~(8)~~*(9)* "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

~~(9)~~*(10)* "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to between 9 and 40 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment operated as a guest ranch or outfitting and guide facility during the year.

~~(10)~~*(11)* "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to between 9 and 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment operated as a guest ranch or outfitting and guide facility during the year.

~~(11)~~*(12)* "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

~~(12)~~*(13)* "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 9, 2011

CHAPTER NO. 358

[HB 477]

AN ACT ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT FOR THE MONTANA HISTORICAL SOCIETY FOR COSTS ASSOCIATED WITH

HISTORICAL INTERPRETATION AND THE ROBERT SCRIVER COLLECTION; PROVIDING AN ALLOCATION TO THE ACCOUNT FROM THE LODGING FACILITY USE TAX; DECREASING AN ALLOCATION TO THE DEPARTMENT OF COMMERCE FROM THE LODGING FACILITY USE TAX; AMENDING SECTION 15-65-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana historical interpretation state special revenue account. (1) There is a Montana historical interpretation state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the Montana historical interpretation state special revenue account money allocated from the lodging facility use tax proceeds allocated by 15-65-121.

(3) Money in the account is available to the Montana historical society by appropriation and must be used to pay costs associated with historical interpretation and the Robert Scriver collection.

Section 2. Section 15-65-121, MCA, is amended to read:

"15-65-121. Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 17-2-124, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 17-2-124 and as provided in subsections ~~(1)(a)~~ *(2)(a)* through ~~(1)(c)~~ *(2)(f)* of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004.

(2) The ~~balance of the~~ *balance of the* tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account ~~is statutorily appropriated, as provided in 17-7-502, and~~ must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, *to the Montana historical interpretation state special revenue account,* to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) ~~67.5%~~ *64.9%* to be used directly by the department of commerce; ~~and~~

(e) (i) except as provided in subsection ~~(1)(e)(ii)~~ *(2)(e)(ii)*, 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district~~.~~*; and*

(f) 2.6% to the Montana historical interpretation state special revenue account established in [section 1].

~~(2)~~*(3)* If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

~~(3)~~*(4)* If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(5) The tax proceeds received that are transferred to a state special revenue account pursuant to subsections (2)(a) through (2)(e) are statutorily appropriated to the entities as provided in 17-7-502.

(6) The tax proceeds received that are transferred to the Montana historical interpretation state special revenue account pursuant to subsection (2)(f) are subject to appropriation by the legislature."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 22, chapter 3, part 1, and the provisions of Title 22, chapter 3, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 9, 2011

CHAPTER NO. 359

[SB 35]

AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATED TO THE TREATMENT OF PROPERTY CONSISTING OF THE BEDS OF NAVIGABLE RIVERS; DEFINING A "NAVIGABLE RIVER"; REQUIRING AUTHORIZATION FROM THE BOARD OF LAND COMMISSIONERS FOR USES ON THE BEDS OF NAVIGABLE RIVERS; REQUIRING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES FOR PROVIDING LEASES, LICENSES, OR EASEMENTS FOR USES ON THE BEDS OF NAVIGABLE RIVERS; CLARIFYING THE AUTHORITY OF THE BOARD OF LAND COMMISSIONERS TO GRANT EASEMENTS; AND AMENDING SECTIONS 77-1-121, 77-1-134, AND 77-2-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings — purpose. (1) The legislature finds that:

(a) Article IX, section 3, of the Montana constitution provides that the use of all water that is or may be appropriated for sale, rent, distribution, or other beneficial use, the right-of-way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection with the beneficial use, and the sites for reservoirs necessary for collecting and storing water are a public use;

(b) a person who has historically used the bed of a navigable river in conjunction with a legal use of water or for other uses or a person who desires to use the bed of a navigable river in conjunction with a legal use of water or for other uses must be able to do so provided that statutory provisions are met; and

(c) any person who uses the bed of a navigable river after [the effective date of this act]shall apply to the state for a lease, license, or easement and pay full market value for the use of the riverbed.

(2) The purpose of [sections 1 through 9] is to clarify theprocess for the use of the beds of navigable rivers and how the state should be compensated for that use.

(3) Nothing in [sections 1 through 9] diminishes the state's ownership of the beds of navigable rivers, streams, or lakes under any other law.

Section 2. Definitions. Solely for the purposes of [sections 1 through 9], the following definitions apply:

(1) "Footprint" means a structure or other constructed interruption or modification to the bed of a navigable river below the low-water mark as provided in 70-16-201.

(2) "Full market value" means an amount calculated based upon the area of a footprint and the fair market value as determined by rule or statute. The annual payment for a license issued under [sections 1 through 9] is $150.

(3) "Navigable river" means a river adjudicated as navigable for title purposes by a court of competent jurisdiction.

Section 3. Use of beds of navigable rivers — authorization requirement restricted. The board or the department may require a lease, license, or easement under [sections 1 through 9] only for a footprint on the bed of a navigable river.

Section 4. Historic use of navigable riverbeds — authorization required — exemptions. (1) A person using the bed of a navigable river below the low-water mark without written authorization from the department prior to [the effective date of this act] who wants to continue use of the bed of a navigable river after [the effective date of this act] shall file for authorization of the use on a form prescribed by the department for a lease, license, or easement by July 15, 2017.

(2) A person using the bed of a river below the low-water mark without written authorization from the department who wants to continue use of the bed after the date the river is determined to be a navigable river shall file for authorization of the use on a form prescribed by the department for a lease, license, or easement within 5 years after the date that notice is issued by the department as provided in [section 6].

(3) The application must include:

(a) an application fee of $50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant's predecessor in interest used the bed of a navigable river and that the use continues;

(ii) describing the acreage covered by the footprint prior to [the effective date of this act] or, for applications under subsection (2), the acreage covered by the footprint prior to the date the river wasdetermined to be navigable; and

(iii) demonstrating that the use applied for under this section is the use shown in the evidence provided in subsection (3)(c); and

(c) (i) aerial photographs demonstrating the use to which the application for authorization applies; or

(ii) other evidence of the use to which the application for authorization applies.

(4) The department shall issue the authorization for a lease, license, or easement if:

(a) the applicant provides evidence to satisfy the requirements of subsection (3);

(b) the applicant pays the application fee and the full market value of the footprint acreage;

(c) the department has, if necessary, made a site inspection of the use to which the application for authorization applies;

(d) the authorization is for only the acreage of the footprint historically used by the applicant or the applicant's predecessor in interest; and

(e) the authorization is approved by the board.

(5) Proceeds from the application fee must be deposited in the account in [section 5] and must be used by the department to administer the provisions of this section.

(6) The full market value collected pursuant to subsection (4)(b) must be deposited in the appropriate trust fund established for receipt of income from the land over which an authorized use is granted.

(7) Issuance of an authorization pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(8) The department shall waive the survey requirements of 77-2-102 if the department determines that there is sufficient information available to define the boundaries of the proposed use for the purposes of recording the easement or issuing a license or lease.

(9) The requirements of this section do not apply to footprints:

(a) related to hunting, fishing, or trapping;

(b) that existed prior to November 8, 1889;

(c) for which the applicant can show an easement obtained from a state agency prior to [the effective date of this act] or prior to the date the river wasdetermined to be a navigable river; or

(d) associated with a power site regulated pursuant to Title 77, chapter 4, part 2.

(10) A person using the bed of a navigable river who is subject to this section may continue to use the bed of the navigable river for that purpose while applying for a lease, license, or easement or until the applicable timeframe for obtaining a lease, license, or easement expires. The state may not impede access to a footprint or use of a footprint during the applicable timeframe or after a lease, license, or easement is obtained.

(11) The provisions of this section do not restrict the power of the board to seek adjudication of title pursuant to 77-1-105.

Section 5. Historic riverbed use account. (1) There is an account in the state special revenue fund into which the application fees collected pursuant to [section 4] must be deposited.

(2) The funds in the account may be used only for administering the provisions of [section 4].

Section 6. Notice required. (1) The department shall provide notice of the requirements of [sections 1 through 9] to owners of property adjacent to rivers that are navigable rivers on [the effective date of this act] and provide notice pursuant to subsection (3).

(2) For a river determined to be a navigable river after [the effective date of this act], the department shall provide notice of the requirements of [sections 1 through 9] to owners of property adjacent to the navigable river. The 5-year period pursuant to [section 4] begins when the department issues this notice and publishes the notice required in subsection (3) of this section.

(3) The department shall publish notice of navigable rivers and the requirements of [sections 1 through 9] twice in a newspaper of general circulation in the area of the navigable river.

Section 7. Navigable riverbed uses — lease, license, or easement required — challenges. (1) (a) After [the effective date of this act], the department shall require a person who proposes to use the bed of a navigable river up to the low-water mark to obtain a lease, license, or easement pursuant to the provisions of this title.

(b) The requirements of subsection (1)(a) do not apply to footprints related to hunting, fishing, or trapping.

(2) An applicant for authorization to use the bed of a navigable river pursuant to [section 4] or for a lease, license, or easement under this section may challenge the requirement of the authorization based on the navigability of the river, the location of the footprint related to the low-water mark, or other factors. There is no presumption of navigability because an entity has applied for or received a lease, license, or easement.

Section 8. Easement transferable — relocation of structure — increased footprint. (1) An easement granted pursuant to [section 4 or 7] runs with the benefited land and may be transferred or assigned.

(2) (a) Pursuant to rules adopted under [section 9], the holder of a lease, license, or easement under [section 4 or 7] may relocate or increase the size of a footprint and associated facilities due to the natural relocation of a navigable river or other factors.

(b) (i) The holder of a lease, license, or easement shall provide written notice to the department when a footprint or associated facilities are proposed to be relocated or increased in size.

(ii) Without prior board approval, the holder of a lease, license, or easement for water diversion structures associated with a water right may relocate or increase the size of the footprint if the relocation or increase is necessary to accomplish the purpose for which the lease, license, or easement was granted. If the footprint is increased in size, the holder shall pay full market value for the portion of the footprint that is greater than the original footprint and shall obtain the appropriate state or federal permits.

(3) Section 77-1-805 applies to the use of navigable rivers for which leases, licenses, or easements for the use of the bed have been granted.

Section 9. Board to adopt rules. To fulfill the requirement of [sections 1 through 9], the board shall adopt rules to:

(1) determine the full market value for the use of the bed of a navigable river and establish a minimum payment for leases and easements;

(2) allow an applicant to choose to apply for a lease, license, or easement depending on the type of proposed use and the duration of the use; and

(3) allow the holder of a lease, license, or easement to relocate or increase the size of a footprint based on natural relocation of a navigable river or other factors.

Section 10. Section 77-1-121, MCA, is amended to read:

"77-1-121. Environmental review compliance — exemptions. (1) Except as provided in 77-1-122*, [section 4],* and subsection (2) of this section, the department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title only if the department is actively proposing a sale or exchange or to issue a right-of-way, easement, placement of improvement, lease, license, or permit or is acting in response to an application for an authorization for a proposal.

(2) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease or license that expressly states that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82.

(3) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title if the department or board chooses not to take any action, even though either may have the authority to take an action.

(4) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

(a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;

(b) development or adoption of zoning regulations;

(c) review of a proposed subdivision pursuant to Title 76, chapter 3;

(d) actions related to annexation;

(e) development or adoption of plans or reports on extension of services; and

(f) other actions that are related to local planning."

Section 11. Section 77-1-134, MCA, is amended to read:

"77-1-134. Irrigation structures, utility structures, and bridges of formerly taxable land — water rights. (1) If an irrigation structure, a utility structure, or a bridge was placed on land that consists of the bed of a navigable river or stream, the irrigation structure, utility structure, or bridge remains the property of the original owner or the original owner's successors in interest or assignees. ~~Accecss~~ *Subject to [section 4(10)], access* to the irrigation structures, utility structures, and bridges described in this section for the purposes of operation, maintenance, repair, enhancement, or improvement may not be impeded by the state.

(2) ~~The~~ *Subject to [section 4(10)], the* change of designation of the bed of a navigable river or stream from a taxable to a nontaxable status may not interfere with or impede the exercise of a water right, including a livestock watering right for which a claim was not required to be filed pursuant to 85-2-212 and 85-2-222."

Section 12. Section 77-2-101, MCA, is amended to read:

"77-2-101. Easements for specific uses. (1) Upon proper application as provided in 77-2-102, the board may grant easements on state lands for the following purposes:

(a) schoolhouse sites and grounds;

(b) public parks;

(c) community buildings;

(d) cemeteries;

(e) conservation purposes:

(i) to the department of fish, wildlife, and parks for parcels that are surrounded by or adjacent to land owned by the department of fish, wildlife, and parks as of January 1, 2001;

(ii) to a nonprofit corporation for parcels that are surrounded by or adjacent to land owned by that same nonprofit corporation as of January 1, 2001; and

(iii) to a nonprofit corporation for the Owen Sowerwine natural area located within section 16, township 28 north, range 21 west, in Flathead County; and

(f) for other public uses.

(2) The board may grant easements on state lands for the following purposes:

(a) right-of-way across or upon any portion of state lands for any public highway or street, any ditch, reservoir, railroad, private road, or telegraph or telephone line, or any other public use as defined in 70-30-102; ~~or~~

(b) any private building or private sewage system that encroaches on state lands*; or*

(c) the use of the bed of a navigable river pursuant to [section 4 or 7]."

Section 13. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 14. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 77, chapter 1, and the provisions of Title 77, chapter 1, apply to [sections 1 through 9].

Section 15. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 9, 2011

CHAPTER NO. 360

[SB 36]

AN ACT PROVIDING A DISTRICT COURT DISCRETION TO AWARD REASONABLE COSTS AND ATTORNEY FEES INCURRED AS A RESULT OF AN APPEAL OF A FINAL DECISION ON A PERMIT APPLICATION OR A

CHANGE IN APPROPRIATION RIGHT; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-125, MCA, is amended to read:

"85-2-125. Recovery of costs and attorney fees by prevailing party. (1) If a final decision of the department on an application for a permit *or a change in appropriation right* is appealed to district court, the district court ~~shall~~ *may* award the prevailing party reasonable costs and attorney fees.

(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to an application for a permit or a change in an appropriation right filed on or after [the effective date of this act].

Approved May 9, 2011

CHAPTER NO. 361

[SB 156]

AN ACT ALLOWING TRIBAL FAMILY ASSISTANCE PLANS TO USE A PORTION OF TEMPORARY ASSISTANCE TO NEEDY FAMILIES MAINTENANCE OF EFFORT FUNDS FOR NONCASH BENEFITS; AMENDING SECTION 53-4-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-210, MCA, is amended to read:

"53-4-210. Tribal family assistance plan. (1) As used in this section, "Indian tribe" means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

(2) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 612, authorizes an Indian tribe or a combination of tribes to request federal approval to implement a tribal family assistance plan.

(3) *(a)* If a Montana Indian tribe or a combination of tribes receives approval to implement a tribal family assistance plan and chooses to base ~~their~~ *its* share of the federal temporary assistance for needy families block grant on the same federal fiscal year 1994 service population as ~~they plan~~ *it plans* to serve under ~~their~~ *the* tribal family assistance plan, the legislature shall continue to provide the Indian tribe or combination of tribes with a proportionate state share ~~for cash benefits~~ based on the maintenance of effort level established by the legislature for that biennium or the maintenance of effort level set in statute.

(b) A tribe or combination of tribes may use the state share for:

(i) monthly cash benefit payments; or

(ii) supportive services costs as allowed under the Montana state plan for the temporary assistance for needy families program.

(4) The Indian tribe or combination of tribes retain eligibility to form a partnership with the department and share funding for approved special projects related to welfare reform.

(5) The department shall provide the Indian tribe or combination of tribes with a reasonable level of technical assistance in the form of eligibility and case management training, policy interpretation, and automated system background information. The technical assistance must be provided at no cost to the Indian tribe or combination of tribes for a period of 1 year after the inception of the tribal family assistance plan. After 1 year, the Indian tribe or combination of tribes may contract with the department for continued technical assistance.

(6) The tribe or combination of tribes may contract with the department for the provision of participant services or associated administrative functions that the tribe and the department find appropriate.

(7) The department shall transfer to each new tribal family assistance plan after April 28, 1999, $100,000 of general fund money from existing general fund appropriation authority for each of the fiscal years of the succeeding biennium for the use of each tribe implementing a family assistance plan."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 9, 2011

CHAPTER NO. 362

[SB 410]

AN ACT PROVIDING FOR THE DISPOSITION OF ANY FUNDS RECOVERED BY THE STATE OF MONTANA FROM PPL MONTANA, LLC, FOR THE USE OF NAVIGABLE RIVERBED LANDS FOR POWER GENERATION FROM 2000 THROUGH 2007; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT FOR ANY RECOVERED FUNDS FOR THE PURPOSE OF PURCHASING REAL PROPERTY; PROVIDING CONSIDERATIONS FOR THE BOARD OF LAND COMMISSIONERS TO TAKE INTO ACCOUNT WHEN DETERMINING WHETHER TO PURCHASE REAL PROPERTY AND APPURTENANCES; PROVIDING FOR THE DISPOSITION OF INTEREST AND INCOME TO THE GUARANTEE ACCOUNT FOR DISTRIBUTION TO PUBLIC SCHOOLS; PROVIDING FOR OFFSETTING OF LAND PURCHASES; ESTABLISHING LIMITS ON ACQUISITION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 77-1-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, on March 30, 2010, the Montana Supreme Court in PPL Montana, LLC v. State, 2010 MT 64, 355 Mont. 402, 229 P.3d 421 (2010), affirmed the decision by the Montana First Judicial District Court, Lewis and Clark County, that the use of navigable riverbed lands for power generation subjected PPL Montana to the payment of damages under Montana's hydroelectric resources laws and held that the navigable riverbeds are part of the state's public land trust under Article X, section 11, of the Montana Constitution; and

WHEREAS, the Montana Supreme Court affirmed the judgment entered for the State of Montana in the amount of $40,956,180, plus postjudgment interest,

as compensatory damages for PPL Montana's use of state-owned riverbeds from 2000 through 2007; and

WHEREAS, the Montana Supreme Court determined the riverbeds are held "in trust for the people", but it did not determine which specific beneficiaries are entitled to recovery from the award of compensatory damages and postjudgment interest; and

WHEREAS, the Montana Supreme Court did not determine whether past, present, or future beneficiaries are entitled to compensation; and

WHEREAS, in 1937 the Montana Legislature enacted legislation providing that when a navigable stream changes course, the abandoned bed belongs to the State of Montana to be held in trust for the benefit of public schools by enacting section 1, Chapter 36, Laws of 1937, now codified as section 77-1-102, MCA; and

WHEREAS, PPL Montana petitioned the United States Supreme Court to review the Montana Supreme Court's decision and overturn the award of damages; and

WHEREAS, compensatory damages and postjudgment interest have not been paid to the state based on PPL Montana's pending appeal to the United States Supreme Court; and

WHEREAS, it is the Legislature's intent to balance the interest of past, present, and future beneficiaries by clarifying that any money received by the State of Montana from PPL Montana as a result of the litigation cited in this preamble must be used to purchase higher-producing state lands while selling lower-producing state lands; and

WHEREAS, it is the Legislature's intent to distribute to the public schools the net interest and income earned on real property and appurtenances purchased.

Be it enacted by the Legislature of the State of Montana:

Section 1. Public land trust acquisition account. (1) There is a public land trust acquisition account in the state special revenue fund established in 17-2-102. Any funds recovered by the state as a result of the claim that PPL Montana, LLC, owes compensation to the state for using state-owned riverbeds from 2000 through 2007 and any interest that accumulates on the funds must be deposited in the account. The account must be administered by the department and is subject to the provisions of Article X, section 11, of the Montana constitution.

(2) Money deposited in the account pursuant to subsection (1) may be used only for costs associated with evaluating potential purchases and for the purpose of purchasing interests in and appurtenances to real property in accordance with [section 2]. Any interest earned on money deposited in the account must be deposited in the guarantee account provided for in 20-9-622 for distribution to public schools on a monthly basis.

Section 2. Public land trust purchases. (1) Subject to legislative appropriation, the board is authorized to evaluate potential purchases and purchase interests in and appurtenances to real property from the proceeds of the account established in [section 1] pursuant to the limitations of 77-1-220, [section 1], and this section. Transactional costs may not exceed 7% of the purchase price of acquired property. Prior to purchasing interests in and appurtenances to real property, the board shall consider the following:

(a) the income-generating potential of the real property and appurtenances;

(b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701 and 76-13-702;

(c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77, chapter 1, part 8; and

(d) the cost-benefits of potential real property and appurtenance purchases. This cost-benefit analysis must be made available to the public upon request.

(2) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits of the purchase are significant and outweigh the financial risks. In order to reach that determination, the board shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board to:

(a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) manage the land holdings purchased pursuant to this section in accordance with an asset management plan to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the public land trust;

(d) discharge its duties subject to the fiduciary standards set forth in 72-34-114; and

(e) determine the potential for job creation.

(3) All interests in real property and appurtenances acquired under this section must be managed pursuant to this title and are subject to the provisions of Article X, section 11, of the Montana constitution.

(4) After deductions for administrative costs pursuant to 77-1-109, the net interest and income earned on real property and appurtenances purchased with funds from the account established in [section 1] must be distributed to the guarantee account provided for in 20-9-622 for distribution to public schools.

Section 3. Section 77-1-220, MCA, is amended to read:

"77-1-220. Offsetting purchases — *proceeds* — *records.* *(1)* To the extent practical and consistent with the board's powers and duties pursuant to 77-1-202, the board shall offset purchases made pursuant to 77-1-218*,* ~~and~~ 77-1-219*, and [section 2]* by selling an equal amount of land.

(2) Proceeds received from offsetting sales may not be used for:

(a) purchasing additional lands; or

(b) the land banking process under 77-2-361 through 77-2-367.

(3) A separate record of the proceeds received from each sale of land must be maintained."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77, chapter 1, part 2, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the use of funds identified in [section 1] prior to [the effective date of this act].

Approved May 9, 2011

CHAPTER NO. 363

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2013; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as "The General Appropriations Act of 2011".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 2013 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2015 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide accounting, budgeting, and human resource system for any item designated "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide accounting, budgeting, and human resource system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide accounting, budgeting, and human resource system, and is identified as a major subdivision of an agency ordinally numbered with an Arabic numeral.

Section 6. Personal services funding — 2015 biennium. (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2015 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by fund or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the budget request for the 2015 biennium submitted by November 1 to the legislative fiscal analyst by the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 8. Effective date. [This act] is effective July 1, 2011.

Section 9. Appropriations. The following money is appropriated for the respective fiscal years:

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				A. GENERAL GOVERNMENT							
LEGISLATIVE BRANCH (1104)											
1. Legislative Services (20) (Biennial)											
6,204,118	863,099	0	0	0	7,067,217	7,000,796	286,242	0	0	0	7,287,038
a. Retrocommissioning the Capitol Building (Biennial/OTO)											
240,000	0	0	0	0	240,000	0	0	0	0	0	0
2. Legislative Committees and Activities (21) (Biennial)											
696,877	0	0	0	0	696,877	405,133	0	0	0	0	405,133
3. Fiscal Analysis and Review (27) (Biennial)											
1,761,059	0	0	0	0	1,761,059	1,799,669	0	0	0	0	1,799,669
4. Audit and Examination (28) (Biennial)											
2,319,743	1,686,755	0	0	0	4,006,498	2,393,403	1,618,208	0	0	0	4,011,611
Total											
11,221,797	2,549,854	0	0	0	13,771,651	11,599,001	1,904,450	0	0	0	13,503,451

Legislative Services includes a reduction in general fund money of $8,877 in FY 2012 and $8,840 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

CONSUMER COUNSEL (1112)											
1. Administration Program (01)											
0	1,393,320	0	0	0	1,393,320	0	1,393,320	0	0	0	1,393,320
a. Caseload Contingency (OTO)											
0	243,899	0	0	0	243,899	0	247,553	0	0	0	247,553
Total											
0	1,637,219	0	0	0	1,637,219	0	1,640,873	0	0	0	1,640,873

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
GOVERNOR'S OFFICE (3101)											
1. Executive Office Program (01)											
2,589,554	0	0	0	0	2,589,554	2,586,155	0	0	0	0	2,586,155
2. Executive Residence Operations (02)											
106,992	0	0	0	0	106,992	107,618	0	0	0	0	107,618
3. Air Transportation Program (03)											
313,262	19	0	0	0	313,281	321,554	19	0	0	0	321,573
4. Office of Budget and Program Planning (04)											
1,565,588	0	0	0	0	1,565,588	1,576,225	0	0	0	0	1,576,225
a. Legislative Audit (Restricted/Biennial)											
17,956	0	0	0	0	17,956	0	0	0	0	0	0
5. Indian Affairs (05)											
172,789	0	0	0	0	172,789	172,455	0	0	0	0	172,455
6. Centralized Services (06)											
303,015	0	0	0	0	303,015	303,657	0	0	0	0	303,657
a. Legislative Audit (Restricted/Biennial)											
39,505	0	0	0	0	39,505	0	0	0	0	0	0
b. Computer Replacement (OTO)											
21,800	0	0	0	0	21,800	21,800	0	0	0	0	21,800
7. Lieutenant Governor (12)											
326,052	0	0	0	0	326,052	325,265	0	0	0	0	325,265
8. Citizens' Advocate Office (16)											
88,315	11,169	0	0	0	99,484	88,490	11,104	0	0	0	99,594
9. Mental Disabilities Board of Visitors (20)											
396,615	0	0	0	0	396,615	397,593	0	0	0	0	397,593
Total											
5,941,443	11,188	0	0	0	5,952,631	5,900,812	11,123	0	0	0	5,911,935

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Executive Office Program includes a reduction in general fund money of $8,016 in FY 2012 and $7,983 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

The Air Transportation Program is appropriated up to $45,000 for the 2013 biennium from the air transportation state special revenue fund to be used for aircraft maintenance and operating expenses.

SECRETARY OF STATE (3201)

1. Business and Government Services (01)											
a. HAVA (Biennial/OTO)											
0	0	550,000	0	0	550,000	0	0	0	0	0	0
Total											
0	0	550,000	0	0	550,000	0	0	0	0	0	0

COMMISSIONER OF POLITICAL PRACTICES (3202)

1. Administration (01)											
562,360	0	0	0	0	562,360	564,214	0	0	0	0	564,214
a. Legislative Audit (Restricted/Biennial)											
7,091	0	0	0	0	7,091	0	0	0	0	0	0
Total											
569,451	0	0	0	0	569,451	564,214	0	0	0	0	564,214

OFFICE OF THE STATE AUDITOR (3401)

1. Central Management (01)											
0	1,215,825	0	0	0	1,215,825	0	1,216,860	0	0	0	1,216,860
a. Legislative Audit (Restricted/Biennial)											
0	8,854	0	0	0	8,854	0	0	0	0	0	0
2. Insurance Program (03)											

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	0	15,681,505	0	0	0	15,681,505	0	15,651,898	0	0	0	15,651,898
a. Legislative Audit (Restricted/Biennial)												
	0	29,167	0	0	0	29,167	0	0	0	0	0	0
b. Contract Examinations (Biennial)												
	0	747,605	0	0	0	747,605	0	435,605	0	0	0	435,605
3. Securities (04)												
	0	876,459	0	0	0	876,459	0	879,105	0	0	0	879,105
a. Legislative Audit (Restricted/Biennial)												
	0	6,511	0	0	0	6,511	0	0	0	0	0	0
b. Securities Contract Examinations (Biennial)												
	0	41,392	0	0	0	41,392	0	41,392	0	0	0	41,392
c. Securities Legal Funding (OTO)												
	0	92,042	0	0	0	92,042	0	91,799	0	0	0	91,799
Total												
	0	18,699,360	0	0	0	18,699,360	0	18,316,659	0	0	0	18,316,659
DEPARTMENT OF REVENUE (5801)												
1. Director's Office (01)												
	5,357,049	106,445	0	113,801	0	5,577,295	5,358,965	107,607	0	114,715	0	5,581,287
a. Legislative Audit (Restricted/Biennial)												
	185,748	0	1,000	0	0	186,748	0	0	1,000	0	0	1,000
b. Tax Policy and Research Overtime (Restricted)												
	0	0	0	0	0	0	70,000	0	0	0	0	70,000
2. Information Technology and Processing (02)												
	10,858,929	124,804	0	136,935	0	11,120,668	10,865,185	124,804	0	137,053	0	11,127,042
a. Imaging and Scanning Maintenance (Restricted)												
	150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Computer Programming (Restricted/Biennial/OTO)												
	500,000	0	0	0	0	500,000	0	0	0	0	0	0
3. Liquor Control Division (03)												
	0	0	0	2,231,696	0	2,231,696	0	0	0	2,236,497	0	2,236,497
a. Termination Payouts (Restricted)												
	0	0	0	25,000	0	25,000	0	0	0	25,000	0	25,000
b. Overtime and Temporary Staff (Restricted)												
	0	0	0	50,000	0	50,000	0	0	0	50,000	0	50,000
c. SB 29 — Alcohol Server and Sales Training												
	0	0	0	89,004	0	89,004	0	0	0	85,419	0	85,419
4. Citizen Services and Resource Management (05)												
	1,876,058	187,678	0	43,185	0	2,106,921	1,877,962	187,261	0	43,215	0	2,108,438
5. Business and Income Taxes Division (07)												
	10,025,706	544,724	269,210	0	0	10,839,640	10,036,820	545,200	270,218	0	0	10,852,238
a. Abandoned Property Workload (OTO)												
	0	112,066	0	0	0	112,066	0	112,771	0	0	0	112,771
6. Property Assessment Division (08)												
	19,326,056	69,021	0	0	0	19,395,077	19,351,045	64,028	0	0	0	19,415,073
Total												
	48,279,546	1,144,738	270,210	2,689,621	0	52,384,115	47,709,977	1,141,671	271,218	2,691,899	0	51,814,765

Computer Programming is contingent on passage and approval of House Bill No. 316 or Senate Bill No. 329.

Information Technology and Processing and Property Assessment Division do not include present law adjustments for non-department of administration rent increases for the department of revenue for the 2013 biennium. It is the intent of the legislature that its rejection of the governor's proposed present law adjustments for rent is a reduction in the funds available for the purpose of the department of revenue's leases for office space and that the department of revenue either renegotiate the leases due to the reduction in funds or cancel the leases as provided in 2-17-101(6).

Liquor Control Division is appropriated from the liquor enterprise funds not to exceed $124,000,000 in fiscal year 2012 and $130,000,000 in fiscal year 2013 to maintain adequate inventories necessary to meet statutory requirements, to pay freight costs, and to transfer profits and taxes to appropriate accounts.

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Business and Income Taxes Division includes a reduction in general fund money of $76,818 in FY 2012 and $76,495 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

DEPARTMENT OF ADMINISTRATION (6101)

1. Director's Office (01)												
	70,891	577	37,133	0	0	108,601	70,985	577	37,133	0	0	108,695
a. Legislative Audit (Restricted/Biennial)												
	68,252	0	0	0	0	68,252	0	0	0	0	0	0
b. Presidential Electors (OTO)												
	0	0	0	0	0	0	1,500	0	0	0	0	1,500
c. Burial Board (Restricted)												
	12,000	0	0	0	0	12,000	12,000	0	0	0	0	12,000
2. Governor-Elect Program (02)												
a. Governor-Elect (Restricted/OTO)												
	0	0	0	0	0	0	50,000	0	0	0	0	50,000
3. State Accounting Division (03)												
	1,264,613	0	4,910	48,760	0	1,318,283	1,263,991	0	4,910	48,760	0	1,317,661
4. Architecture and Engineering Program (04)												
	0	1,877,493	0	0	0	1,877,493	0	1,881,126	0	0	0	1,881,126
a. Legislative Audit (Restricted/Biennial)												
	0	1,586	0	0	0	1,586	0	0	0	0	0	0
5. General Services Program (06)												
	1,987,817	53,149	0	0	0	2,040,966	1,953,558	53,033	0	0	0	2,006,591
a. Legislative Audit (Restricted/Biennial)												
	0	44	0	0	0	44	0	0	0	0	0	0
b. Close and Sell Old Corrections Building (OTO)												
	39,230	0	0	0	0	39,230	0	0	0	0	0	0

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Purchase OPI Building (OTO)												
	144,225	0	0	0	0	144,225	0	0	0	0	0	0
6. State Information Technology Services Division (07)												
	419,613	1,523,915	0	0	0	1,943,528	422,431	1,523,578	0	0	0	1,946,009
7. Banking and Financial Division (14)												
	0	3,428,139	0	0	0	3,428,139	0	3,423,460	0	0	0	3,423,460
a. Legislative Audit (Restricted/Biennial)												
	0	2,871	0	0	0	2,871	0	0	0	0	0	0
8. Montana State Lottery (15)												
	0	0	0	7,432,097	0	7,432,097	0	0	0	7,438,290	0	7,438,290
a. Legislative Audit (Restricted/Biennial)												
	0	0	0	106,980	0	106,980	0	0	0	0	0	0
9. State Human Resources Division (23)												
	1,848,057	0	0	0	0	1,848,057	1,845,397	0	0	0	0	1,845,397
10. State Tax Appeal Board (37)												
	545,655	0	0	0	0	545,655	544,572	0	0	0	0	544,572
a. Reappraisal Appeal Costs (OTO)												
	24,000	0	0	0	0	24,000	18,000	0	0	0	0	18,000
Total												
	6,424,353	6,887,774	42,043	7,587,837	0	20,942,007	6,182,434	6,881,774	42,043	7,487,050	0	20,593,301

State Accounting Division includes a reduction in general fund money of $1,802 in FY 2012 and $1,795 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

DEPARTMENT OF COMMERCE (6501)

1. Business Resources Division (51)												
	1,851,346	2,203,494	4,719,829	0	0	8,774,669	1,858,299	2,203,875	5,051,551	0	0	9,113,725
a. Legislative Audit (Restricted/Biennial)												

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
4,062	1,354	3,610	0	0	9,026	0	0	0	0	0	0
b. Primary Business Sector Training (OTO)											
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
c. Indian Country Economic Development (OTO)											
800,000	0	0	0	0	800,000	800,000	0	0	0	0	800,000
d. High-Performance Computing (Restricted/OTO)											
125,000	0	0	0	0	125,000	125,000	0	0	0	0	125,000
e. Main Street Program (OTO)											
125,000	0	0	0	0	125,000	125,000	0	0	0	0	125,000
2. Montana Promotion Division (52)											
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
a. Legislative Audit (Restricted/Biennial)											
0	29,308	0	0	0	29,308	0	0	0	0	0	0
3. Energy Promotion and Development Division (55)											
455,000	0	0	0	0	455,000	455,000	0	0	0	0	455,000
4. Community Development Division (60)											
520,667	758,361	5,484,488	0	0	6,763,516	520,833	759,385	5,483,789	0	0	6,764,007
a. Legislative Audit (Restricted/Biennial)											
2,291	3,084	1,802	0	0	7,177	0	0	0	0	0	0
b. Coal Board Grants (Biennial)											
0	2,932,803	0	0	0	2,932,803	0	2,984,621	0	0	0	2,984,621
c. Hard Rock Mining Reserve (Restricted)											
0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
5. Housing Division (74)											
0	25,800	5,252,891	0	0	5,278,691	0	25,800	5,627,764	0	0	5,653,564
a. Legislative Audit (Restricted/Biennial)											
0	0	4,055	0	0	4,055	0	0	0	0	0	0
6. Director's Office/Management Services Division (81)											

	Fiscal 2012						Fiscal 2013				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
363,811	0	600,000	0	0	963,811	364,710	0	600,000	0	0	964,710
a. Legislative Audit (Restricted/Biennial)											
852	0	0	0	0	852	0	0	0	0	0	0
Total											
5,248,029	6,804,204	16,066,675	0	0	28,118,908	5,248,842	6,823,681	16,763,104	0	0	28,835,627

Business Resources Division includes a reduction in general fund money of $3,317 in FY 2012 and $3,303 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

If House Bill No. 351 is not passed and approved, the Community Development Division is decreased by $375,674 state special revenue in FY 2012 and $375,674 state special revenue in FY 2013.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

1. Workforce Services Division (01)											
0	10,650,425	21,290,708	0	0	31,941,133	0	10,684,411	21,190,303	0	0	31,874,714
2. Unemployment Insurance Division (02)											
0	3,716,424	9,387,482	0	0	13,103,906	0	3,718,627	9,433,266	0	0	13,151,893
a. UI Modernization (OTO)											
0	0	186,490	0	0	186,490	0	0	185,951	0	0	185,951
3. Commissioner's Office/Centralized Services Division (03)											
278,173	683,596	580,398	88,410	0	1,630,577	279,307	685,338	580,288	88,517	0	1,633,450
4. Employment Relations Division (04)											
1,074,228	10,561,063	713,134	0	0	12,348,425	1,080,436	10,570,193	717,181	0	0	12,367,810
a. HB 186 — Worksafe Montana											
0	500,000	0	0	0	500,000	0	500,000	0	0	0	500,000
b. HB 334 — Workers' Compensation Revisions											
0	442,772	0	0	0	442,772	0	408,297	0	0	0	408,297
5. Business Standards Division (05)											
0	14,888,924	12,673	0	0	14,901,597	0	14,970,299	12,669	0	0	14,982,968

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. HB 83 — Prescription Drug Registry	0	145,107	0	0	0	145,107	0	115,838	0	0	0	115,838
b. SB 423 — Medical Marijuana	0	50,000	0	0	0	50,000	0	50,000	0	0	0	50,000
6. Montana Community Services (07)	123,663	39,414	2,861,456	0	0	3,024,533	123,922	39,389	2,860,712	0	0	3,024,023
7. Workers' Compensation Court (09)	0	671,822	0	0	0	671,822	0	672,289	0	0	0	672,289
Total	1,476,064	42,349,547	35,032,341	88,410	0	78,946,362	1,483,665	42,414,681	34,980,370	88,517	0	78,967,233

Employment Relations Division includes a reduction in general fund money of $2,999 in FY 2012 and $2,986 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

HB 186 — Worksafe Montana is contingent on passage and approval of House Bill No. 186.

HB 83 — Prescription Drug Registry is continent upon passage and approval of House Bill No. 83.

SB 423 — Medical Marijuana is contingent on passage and approval of Senate Bill No. 423.

DEPARTMENT OF MILITARY AFFAIRS (6701)

1. Centralized Services (01)	632,428	0	325,475	0	0	957,903	633,758	0	325,869	0	0	959,627
a. Legislative Audit (Restricted/Biennial)	5,746	0	0	0	0	5,746	0	0	0	0	0	0
2. Challenge Program (02)	907,613	0	2,772,848	0	0	3,680,461	907,911	0	2,773,731	0	0	3,681,642
a. Legislative Audit (Restricted/Biennial)	1,257	0	3,771	0	0	5,028	0	0	0	0	0	0

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. National Guard Scholarship Program (03) (Biennial)												
	209,408	0	0	0	0	209,408	209,408	0	0	0	0	209,408
4. Starbase Program (04)												
	0	0	315,282	0	0	315,282	0	0	315,903	0	0	315,903
a. Legislative Audit (Restricted/Biennial)												
	0	0	718	0	0	718	0	0	0	0	0	0
5. Army National Guard Program (12)												
	1,618,700	0	12,491,694	0	0	14,110,394	1,630,987	0	12,508,128	0	0	14,139,115
a. Legislative Audit (Restricted/Biennial)												
	13,647	0	26,575	0	0	40,222	0	0	0	0	0	0
b. Military Museum — Equipment (Restricted/Biennial/OTO)												
	100,000	0	0	0	0	100,000	0	0	0	0	0	0
6. Air National Guard Program (13)												
	378,721	0	4,012,143	0	0	4,390,864	382,162	0	4,040,009	0	0	4,422,171
a. Legislative Audit (Restricted/Biennial)												
	1,257	0	4,489	0	0	5,746	0	0	0	0	0	0
7. Disaster and Emergency Services (21)												
	1,058,556	370,200	6,263,590	0	0	7,692,346	1,063,980	350,200	6,262,505	0	0	7,676,685
a. Legislative Audit (Restricted/Biennial)												
	3,950	0	6,106	0	0	10,056	0	0	0	0	0	0
8. Veterans' Affairs Program (31)												
	886,097	1,012,249	0	0	0	1,898,346	883,722	941,173	0	0	0	1,824,895
a. Legislative Audit (Restricted/Biennial)												
	2,873	1,437	0	0	0	4,310	0	0	0	0	0	0
Total												
	5,820,253	1,383,886	26,222,691	0	0	33,426,830	5,711,928	1,291,373	26,226,145	0	0	33,229,446

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Disaster and Emergency Services includes a reduction in general fund money of $5,775 in FY 2012 and $5,750 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

TOTAL SECTION A											
84,980,936	81,467,770	78,183,960	10,365,868	0	254,998,534	84,400,873	80,426,285	78,282,880	10,267,466	0	253,377,504

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
B. HEALTH AND HUMAN SERVICES												
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)												
Economic Security Services Branch (6902)												
1. Management and Disability Transitions (01)	5,301,776	834,188	18,517,000	0	0	24,652,964	5,366,102	834,134	18,685,486	0	0	24,885,722
a. MTAP New Technologies	0	0	0	0	0	0	0	775,000	0	0	0	775,000
2. Human and Community Services Division (02)	29,400,741	2,278,667	223,682,070	0	0	255,361,478	29,124,109	2,277,681	222,571,928	0	0	253,973,718
a. Temporary and Modified FTE (Restricted/OTO)	0	103,985	134,240	0	0	238,225	0	103,223	135,002	0	0	238,225
b. TANF to Child Care to Reduce General Fund (OTO)	0	0	1,164,364	0	0	1,164,364	0	0	1,364,300	0	0	1,364,300
c. SNAP Benefits (Biennial)	0	0	107,500,000	0	0	107,500,000	0	0	107,500,000	0	0	107,500,000
d. TANF Education Support (Restricted/OTO)	0	0	100,000	0	0	100,000	0	0	100,000	0	0	100,000
3. Child and Family Services Division (03)	31,873,779	2,463,022	26,550,974	0	0	60,887,775	33,460,473	2,463,022	27,407,977	0	0	63,331,472
a. Foster Care Stipend (Restricted/Biennial/OTO)	0	0	355,875	0	0	355,875	0	0	355,875	0	0	355,875
4. Child Support Enforcement Division (05)	4,084,415	1,794,520	5,047,141	0	0	10,926,076	4,088,391	1,789,929	5,045,954	0	0	10,924,274
Total	70,660,711	7,474,382	383,051,664	0	0	461,186,757	72,039,075	8,242,989	383,166,522	0	0	463,448,586

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funding for the MTAP New Technologies includes $775,000 state special revenue in fiscal year 2013 for the Montana telecommunications access program contingent upon passage of federal communication commission regulations requiring states to pay for new technologies related to video relay service (VRS) and internet protocol relay (IP).

Funding for Temporary and Modified FTE may be used only for FTE in the human and community services division.

Funding for TANF Education Support may be used by the human and community services division only for grants to appropriate programs that offer adult basic education programs for TANF-eligible adults working to improve their educational skills, obtain a high school diploma, or obtain general educational development (GED) certification. Priority for funding must be given to adult basic education and programs or entities offering instruction and assistance during the months of June, July, and August.

Funding for Foster Care Stipend may be used only by the child and family services division to pay stipends to families who provide regular foster care in a youth foster home and kinship families who provide regular foster care in a kinship foster home of an estimated $0.75 cents per day in addition to the daily foster care maintenance payment. Child and family services may adjust the stipend amount to reflect the funding of $355,875 each year of the biennium with the actual number of children placed in regular family foster care and kinship foster care.

Management and Disability Transitions, Human and Community Services Division, Child and Family Services Division, and Child Support Enforcement Division do not include present law adjustments for non-department of administration rent increases for the department of public health and human services for the 2013 biennium. It is the intent of the legislature that its rejection of the governor's proposed present law adjustments for rent is a reduction in the funds available for the purpose of the department of public health and human services' leases for office space and that the department of public health and human services either renegotiate the leases due to the reduction in funds or cancel the leases as provided in 2-17-101(6).

Director's Office (6904)

1. Director's Office (04)											
1,638,989	378,654	1,922,777	0	0	3,940,420	1,637,808	378,769	1,922,181	0	0	3,938,758
Total											
1,638,989	378,654	1,922,777	0	0	3,940,420	1,637,808	378,769	1,922,181	0	0	3,938,758

Operations Services Branch (6906)

1. Business and Financial Services Division (06)											
3,467,877	655,724	4,620,264	0	0	8,743,865	3,499,858	662,890	4,672,047	0	0	8,834,795

a. Legislative Audit (Restricted/Biennial)

	Fiscal 2012						Fiscal 2013				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
166,861	10,404	196,229	0	0	373,494	0	0	0	0	0	0
2. Quality Assurance Division (08)											
2,406,706	557,772	5,853,425	0	0	8,817,903	2,335,599	625,495	5,802,392	0	0	8,763,486
a. Medical Marijuana Program Staffing (Restricted)											
0	80,501	0	0	0	80,501	0	80,142	0	0	0	80,142
b. Medical Marijuana Program Annualization (Restricted)											
0	29,620	0	0	0	29,620	0	29,620	0	0	0	29,620
c. SB 423 — Medical Marijuana (OTO)											
0	150,000	0	0	0	150,000	0	150,000	0	0	0	150,000
3. Technology Services Division (09)											
8,487,823	1,065,451	11,851,928	0	0	21,405,202	8,840,314	1,069,188	12,306,043	0	0	22,215,545
4. Management and Fair Hearings Division (16)											
467,338	35,393	673,683	0	0	1,176,414	466,952	35,333	673,273	0	0	1,175,558
Total											
14,996,605	2,584,865	23,195,529	0	0	40,776,999	15,142,723	2,652,668	23,453,755	0	0	41,249,146

The Quality Assurance Division is appropriated one-time-only funding for the 2013 biennium in an amount not to exceed $103,061 of the state special revenue fund share and $204,308 of the federal special revenue share from the recovery audit contract to pay recovery audit costs. Payments to the contractor are contingent upon the amount of funds recovered and may not exceed 12.5% of the amount recovered.

Funding for Medical Marijuana Program Staffing may only be used by the Quality Assurance Division to pay staff to administer the medical marijuana registry.

Funding for Medical Marijuana Program Annualization may only be used by the Quality Assurance Division to pay annualized expenses for the medical marijuana registry.

SB 423 — Medical Marijuana is contingent on passage and approval of Senate Bill No. 423.

Quality Assurance Division does not include present law adjustments for non-department of administration rent increases for the department of public health and human services for the 2013 biennium. It is the intent of the legislature that its rejection of the governor's proposed present law adjustments for rent is a reduction in the funds available for the purpose of the department of public health and human services' leases for office space and that the department of public health and human services either renegotiate the leases due to the reduction in funds or cancel the leases as provided in 2-17-101(6).

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Public Health and Safety (6907)												
1. Public Health and Safety Division (07)												
	2,727,931	14,806,920	38,246,179	0	0	55,781,030	2,725,183	14,804,580	38,247,740	0	0	55,777,503
Total												
	2,727,931	14,806,920	38,246,179	0	0	55,781,030	2,725,183	14,804,580	38,247,740	0	0	55,777,503
Medicaid and Health Services Branch (6911)												
1. Disability Services Division (10)												
	74,383,149	5,607,178	129,478,183	0	0	209,468,510	75,834,802	5,607,178	130,542,467	0	0	211,984,447
2. Health Resources Division (11)												
	114,523,581	68,393,078	466,795,456	0	0	649,712,115	119,867,693	69,177,133	492,995,088	0	0	682,039,914
a. Executive Medicaid Caseload Estimates (Restricted)												
	7,270,118	0	19,874,759	0	0	27,144,877	6,973,623	0	20,433,896	0	0	27,407,519
b. Health Information Technology Incentive Payments (OTO)												
	0	0	18,853,000	0	0	18,853,000	0	0	16,476,500	0	0	16,476,500
c. Indian Property Exclusion (OTO)												
	0	262,543	513,982	0	0	776,525	0	266,037	510,488	0	0	776,525
d. Reestablish Hospital Base (OTO)												
	0	307,268	0	0	0	307,268	0	261,291	0	0	0	261,291
e. Big Sky Rx (Biennial)												
	0	4,003,825	0	0	0	4,003,825	0	4,003,223	0	0	0	4,003,223
3. Medicaid and Health Services Management (12)												
	2,198,977	36,708	5,656,022	0	0	7,891,707	2,195,992	39,755	5,655,071	0	0	7,890,818
4. Senior and Long-Term Care Division (22)												
	60,935,780	28,518,813	158,860,132	0	0	248,314,725	62,484,898	28,311,258	158,605,217	0	0	249,401,373
a. 100 Slots for Home and Community Based Waiver Services												
	0	845,250	1,654,750	0	0	2,500,000	0	856,500	1,643,500	0	0	2,500,000

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Area Agencies on Aging (Restricted/OTO)												
	1,500,000	0	0	0	0	1,500,000	1,500,000	0	0	0	0	1,500,000
c. County Nursing Home Intergovernmental Transfer (IGT) (Restricted)												
	0	3,134,373	6,136,181	0	0	9,270,554	0	3,516,000	6,746,699	0	0	10,262,699
d. Direct Care Provider Rate Increase (Restricted/OTO)												
	0	1,638,708	3,208,106	0	0	4,846,814	0	1,711,292	3,283,723	0	0	4,995,015
e. Restore Personal Assistance (OTO)												
	0	251,358	492,085	0	0	743,443	0	251,358	482,320	0	0	733,678
5. Addictive and Mental Disorders Division (33)												
	62,845,099	14,008,262	49,298,273	0	0	126,151,634	63,316,558	14,801,412	50,397,417	0	0	128,515,387
Total												
	323,656,704	127,007,364	860,820,929	0	0	1,311,484,997	332,173,566	128,802,437	887,772,386	0	0	1,348,748,389

If House Bill No. 34 is passed and approved, the appropriation for Health Resources Division is reduced by $26,938 state special revenue in FY 2012 and $25,791 state special revenue in FY 2013.

Health Resources Division includes a reduction in general fund money of $510,515 in FY 2012 and $508,369 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

100 Slots for Home and Community Based Waiver Services (HCBS) may be used only to fund medicaid services in the following order of priority:

(1) plans of care for individuals moved from nursing homes into community settings under the HCBS;

(2) maintaining individuals in assisted living facilities and others in the community who are at immediate risk of nursing home placement;

(3) medicaid nursing home bed days in the event bed days costs are underfunded as of July 1 of each year.

County Nursing Home Intergovernmental Transfer (IGT) may be used as one-time-only payments to nursing homes based on the number of medicaid services provided. State special revenue in County Nursing Home IGT may be expended only after the office of budget and program planning has certified that the department has collected from participating counties the amount necessary to make one-time-only payments to nursing homes and to fund the base budget in the nursing facility program and the community services program at the level of $564,785 state special revenue each year of the biennium and $1,105,682 federal funds in FY 2012 and $1,083,741 in FY 2013.

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Direct Care Provider Rate Increase may be used only to raise provider rates for medicaid services to allow for wage increases or lump-sum payments to workers who provide direct care and ancillary services.

Federal special revenue appropriated to the department of public health and human services may be allocated among programs when developing 2013 biennial operating plans.

Disability Services Division, Senior and Long-Term Care Division, and Addictive and Mental Disorders Division do not include present law adjustments for non-department of administration rent increases for the department of public health and human services for the 2013 biennium. It is the intent of the legislature that its rejection of the governor's proposed present law adjustments for rent is a reduction in the funds available for the purpose of the department of public health and human services' leases for office space and that the department of public health and human services either renegotiate the leases due to the reduction in funds or cancel the leases as provided in 2-17-101(6).

If the Addictive and Mental Disorders Division is unable to secure a federal grant to support the suicide prevention coordination position, the division may use other funds available from the appropriations for the Addictive and Mental Disorders Division to fund the position.

TOTAL SECTION B											
413,680,940	152,252,185	1,307,237,078	0	0	1,873,170,203	423,718,355	154,881,443	1,334,562,584	0	0	1,913,162,382

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
C. NATURAL RESOURCES AND TRANSPORTATION												
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)												
1. Information Services Division (01)												
	0	4,496,449	10,693	0	0	4,507,142	0	4,497,052	10,693	0	0	4,507,745
2. Fisheries Division (03)												
	0	5,739,849	8,458,445	0	0	14,198,294	0	5,744,336	8,473,817	0	0	14,218,153
a. Reinstate Aquatic Nuisance Species (Restricted)												
	0	13,750	41,250	0	0	55,000	0	13,750	41,250	0	0	55,000
b. Reinstate Private Fishing Land Access (OTO)												
	0	10,000	0	0	0	10,000	0	10,000	0	0	0	10,000
c. Increase Aquatic Nuisance Species (Restricted)												
	0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
3. Law Enforcement Division (04)												
	0	9,207,916	387,486	0	0	9,595,402	0	9,210,376	387,999	0	0	9,598,375
4. Wildlife Division (05)												
	0	11,672,968	5,470,689	0	0	17,143,657	0	11,677,297	5,476,490	0	0	17,153,787
a. Reinstate Game Damage Herders (OTO)												
	0	11,500	0	0	0	11,500	0	11,500	0	0	0	11,500
b. Restore Auction Programs (OTO)												
	0	184,800	0	0	0	184,800	0	184,800	0	0	0	184,800
c. Restore Migratory Bird Program (OTO)												
	0	40,000	0	0	0	40,000	0	40,000	0	0	0	40,000
e. Reinstate Block Management (OTO)												
	0	850,000	0	0	0	850,000	0	850,000	0	0	0	850,000
f. Implementation of HB 363 (Restricted)												
	0	162,500	0	0	0	162,500	0	162,500	0	0	0	162,500
g. Upland Game Bird Program												

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	0	149,834	132,560	0	0	282,394	0	149,065	133,000	0	0	282,065
h. Grizzly Bear DNA Study (Restricted/OTO)												
	0	150,000	0	0	0	150,000	0	150,000	0	0	0	150,000
5. Parks Division (06)												
	0	9,168,004	365,857	0	0	9,533,861	0	9,173,832	364,432	0	0	9,538,264
a. Restore Grants Administration Funding (OTO)												
	0	85,000	0	0	0	85,000	0	85,000	0	0	0	85,000
b. Snowmobile Groomers (Restricted/Biennial)												
	0	210,000	0	0	0	210,000	0	210,000	0	0	0	210,000
c. Fund FAS Management in Parks (Restricted)												
	0	172,500	0	0	0	172,500	0	172,500	0	0	0	172,500
d. Redirected Plate Fee (Restricted)												
	0	160,000	0	0	0	160,000	0	160,000	0	0	0	160,000
6. Communication and Education Division (08)												
	0	2,916,800	736,802	0	0	3,653,602	0	2,918,331	736,187	0	0	3,654,518
a. MT Outdoor Discover Center Educational Grants (Restricted)												
	0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
7. Management and Finance (09)												
	0	8,838,533	58,553	0	0	8,897,086	0	8,877,622	57,607	0	0	8,935,229
a. Legislative Audit (Restricted/Biennial)												
	0	85,473	15,083	0	0	100,556	0	0	0	0	0	0
b. Legal Unit Workload Efforts (Restricted)												
	0	50,164	0	0	0	50,164	0	50,043	0	0	0	50,043
c. Calculate Sustainable Yield (Restricted/Biennial/OTO)												
	0	339,676	0	0	0	339,676	0	339,676	0	0	0	339,676
8. Fish and Wildlife Admin (12)												
	0	3,520,914	169,398	0	0	3,690,312	0	3,520,749	169,591	0	0	3,690,340

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total	0	58,361,630	15,846,816	0	0	74,208,446	0	58,333,429	15,851,066	0	0	74,184,495

Funds appropriated for Increase Aquatic Nuisance Species must be used for prevention of aquatic nuisance species, including but not limited to on-the-ground inspections and boat washing facilities. Funds may also be used for early detection, monitoring, and rapid response for control and eradication of aquatic nuisance species.

The Upland Game Bird Enhancement funding switch is restricted to program operations and does not include acquisition of easements.

If House Bill No. 363 is not passed and approved, Implementation of HB 363 is void.

Grizzly Bear DNA Study is restricted to the Cabinet-Yaak management area.

Snowmobile Groomers is restricted to purchasing groomers that may be used by local snowmobile clubs for grooming areas that are open to public use.

Fund FAS Management in Parks is restricted to the management of fishing access sites by the parks division.

If House Bill No. 370 is not passed and approved in a form that reallocates $0.25 of the light vehicle registration fee to the state parks program, then Redirected Plate Fee is void.

MT Outdoor Discovery Center Educational Grants is limited to grants to local school districts for travel related costs to utilize the educational opportunities offered by the center.

Legal Unit Workload Efforts appropriation is restricted to the development of a memo of understanding with the department of justice for additional legal support.

If House Bill No. 619 is not passed and approved in a form that directs the department to establish a sustainable yield calculation for department-owned lands, then Calculate Sustainable Yield is void.

DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)

1. Central Management Program (10)												
	370,854	1,190,514	341,671	0	0	1,903,039	370,706	1,189,782	341,224	0	0	1,901,712
2. Planning, Prevention, and Assistance Division (20)												
	2,628,476	2,716,443	7,653,817	0	0	12,998,736	2,627,355	2,716,726	7,649,026	0	0	12,993,107
3. Enforcement Division (30)												

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
548,197	468,970	371,914	0	0	1,389,081	547,775	468,717	371,725	0	0	1,388,217
4. Remediation Division (40)											
0	5,761,840	6,136,245	0	0	11,898,085	0	5,762,678	6,138,466	0	0	11,901,144
a. S&W Claims Payment (Restricted/Biennial/OTO)											
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
b. GO Bond Sales NPL Sites (Restricted/Biennial/OTO)											
0	1,100,000	0	0	0	1,100,000	0	1,100,000	0	0	0	1,100,000
5. Permitting and Compliance Division (50)											
1,040,010	16,185,125	6,880,461	0	0	24,105,596	1,044,735	16,197,277	6,873,491	0	0	24,115,503
a. Hard Rock and Major Facility Siting (Restricted/Biennial)											
0	1,750,000	0	0	0	1,750,000	0	1,750,000	0	0	0	1,750,000
b. SB 206 — Energy Transmission Siting											
0	613,386	0	0	0	613,386	0	602,386	0	0	0	602,386
6. Petroleum Tank Release Compensation Board (90)											
0	703,761	0	0	0	703,761	0	706,127	0	0	0	706,127
Total											
4,587,537	31,240,039	21,384,108	0	0	57,211,684	4,590,571	31,243,693	21,373,932	0	0	57,208,196

Central Management Program includes a reduction in general fund money of $4,454 in FY 2012 and $4,436 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

The department is authorized to decrease federal special revenue in the water pollution control and/or drinking water revolving loan programs and to increase state special revenue by a like amount within the administration account when the amount of federal capitalization funds have been expended or when federal funds and bond proceeds will be used for other program purposes.

If House Bill No. 610 is not passed and approved in a form that raises the public water supply connection fee, then the general fund appropriation in the Permitting and Compliance Division is increased by $697,350 in FY 2012 and FY 2013 and the state special revenue is increased by $151,733 in FY 2012 and $144,216 in FY 2013.

SB 206 — Energy Transmission Siting is contingent upon passage and approval of Senate Bill No. 206.

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department is appropriated up to $500,000 for the 2013 biennium of the funds recovered under the petroleum tank compensation board subrogation program in the 2011 biennium for the purpose of paying contract expenses related to the recovery of funds.

DEPARTMENT OF TRANSPORTATION (5401)

1. General Operations Program (01) (Biennial)												
	0	23,807,299	2,224,010	0	0	26,031,309	0	23,807,219	2,144,187	0	0	25,951,406
a. Legislative Audit (Restricted/Biennial)												
	0	165,200	0	0	0	165,200	0	0	0	0	0	0
2. Construction Program (02) (Biennial)												
	0	78,293,634	390,654,635	0	0	468,948,269	0	80,423,835	408,617,204	0	0	489,041,039
3. Maintenance Program (03) (Biennial)												
	0	128,260,741	7,587,383	0	0	135,848,124	0	128,600,488	7,587,383	0	0	136,187,871
a. State Funded Construction Program (OTO)												
	0	15,000,000	0	0	0	15,000,000	0	15,000,000	0	0	0	15,000,000
b. Tongue River Road Preconstruction (Restricted/Biennial)												
	0	2,500,000	0	0	0	2,500,000	0	2,500,000	0	0	0	2,500,000
4. Motor Carrier Services Division (22)												
	0	8,280,002	3,182,695	0	0	11,462,697	0	7,788,221	2,627,050	0	0	10,415,271
a. Digital Audio/Video Recorders (OTO)												
	0	170,000	0	0	0	170,000	0	0	0	0	0	0
5. Aeronautics Program (40)												
	0	824,466	312,355	0	0	1,136,821	0	824,526	312,424	0	0	1,136,950
a. Grants, Loans, and Pavement Prevention (Biennial)												
	0	910,000	0	0	0	910,000	0	910,000	0	0	0	910,000
b. Aeronautical Maps and Charts (OTO)												
	0	0	0	0	0	0	0	46,000	0	0	0	46,000
c. State Aviation System Plan (Biennial)												
	0	3,700	142,500	0	0	146,200	0	3,700	142,500	0	0	146,200

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
6. Rail, Transit, & Planning Division (50) (Biennial)												
	0	4,625,861	21,802,717	0	0	26,428,578	0	4,632,214	21,794,576	0	0	26,426,790
a. Emergency Medical Services Grants (Biennial)												
	0	1,000,000	0	0	0	1,000,000	0	1,000,000	0	0	0	1,000,000
b. Rail Service Competition Council (Restricted)												
	0	50,000	0	0	0	50,000	0	50,000	0	0	0	50,000
c. Biodiesel Fuel Research (Restricted/Biennial/OTO)												
	0	200,000	0	0	0	200,000	0	200,000	0	0	0	200,000
Total												
	0	264,090,903	425,906,295	0	0	689,997,198	0	265,786,203	443,225,324	0	0	709,011,527

The department may adjust appropriations in the general operations, construction, maintenance, and transportation planning programs between state special revenue and federal special revenue funds if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program.

All federal special revenue appropriations in the department are biennial.

All appropriations in the general operations, construction, maintenance, and transportation planning programs are biennial.

All remaining federal pass-through grant appropriations for highway traffic safety, including reversions for the 2011 biennium, are authorized to continue and are appropriated in fiscal year 2012 and fiscal year 2013.

Tongue River Road Preconstruction funds may be used only to survey and provide design and preliminary engineering work to improve state secondary highway 332.

Biodiesel Fuel Research may be used only to provide grants to Montana state university-northern to test and develop biodiesel and related technology in support of Montana agriculture, refining, transportation, and other related emerging industries.

DEPARTMENT OF LIVESTOCK (5603)

1. Centralized Services Program (01)												
	0	1,876,446	0	0	0	1,876,446	0	1,884,166	0	0	0	1,884,166

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)	0	35,913	0	0	0	35,913	0	0	0	0	0	0
2. Diagnostic Laboratory Program (03)	248,807	1,650,825	0	0	0	1,899,632	248,937	1,655,799	0	0	0	1,904,736
a. Equipment Replacement (OTO)	0	17,000	0	0	0	17,000	0	0	0	0	0	0
b. New Lab Equipment (Biennial/OTO)	0	17,750	29,000	0	0	46,750	0	0	0	0	0	0
3. Animal Health Division (04)	0	740,224	842,747	0	0	1,582,971	0	742,769	844,508	0	0	1,587,277
a. Vehicle Replacement (OTO)	0	0	0	0	0	0	0	26,000	0	0	0	26,000
b. Brucellosis DSA (OTO)	215,821	215,821	0	0	0	431,642	215,821	215,821	0	0	0	431,642
c. Brucellosis Vet & Compliance Specialist (OTO)	65,945	65,946	0	0	0	131,891	65,782	65,783	0	0	0	131,565
4. Milk and Egg Program (05)	0	449,921	28,488	0	0	478,409	0	451,893	28,488	0	0	480,381
a. Vehicle Replacement (OTO)	0	26,000	0	0	0	26,000	0	26,000	0	0	0	26,000
5. Brands Enforcement Division (06)	2,943	3,223,616	0	0	0	3,226,559	2,943	3,229,795	0	0	0	3,232,738
6. Meat and Poultry Inspection Program (10)	614,033	5,717	615,341	0	0	1,235,091	614,184	5,717	615,492	0	0	1,235,393
Total	1,147,549	8,325,179	1,515,576	0	0	10,988,304	1,147,667	8,303,743	1,488,488	0	0	10,939,898

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If House Bill No. 610 is not passed and approved in a form that provides for the implementation of an increase in the livestock per capita fee, then the Centralized Services Program is appropriated an additional $70,215 general fund in FY 2012 and $70,100 general fund in FY 2013 and the Diagnostic Lab Program is appropriated an additional $54,785 general fund in FY 2012 and $54,900 general fund in FY 2013.

Diagnostic Laboratory Program includes a reduction in general fund money of $1,705 in FY 2012 and $1,698 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

In the event that the department experiences extended staff absences and is unable to meet service levels required to maintain AAVLD accreditation standards or peak workload demand, the department may hire additional temporary employees or pay overtime, whichever is determined to be the most cost-effective, to maintain service levels. The department is appropriated not more than $30,000 as a biennial appropriation for additional cost from the state special revenue per capita fee account to meet the service level requirements.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

1. Centralized Services (21)												
	2,466,858	686,226	245,776	0	0	3,398,860	2,501,390	694,637	249,941	0	0	3,445,968
a. Legislative Audit (Restricted/Biennial)												
	125,695	0	0	0	0	125,695	0	0	0	0	0	0
2. Oil and Gas Conservation Division (22)												
	0	2,093,325	107,551	0	0	2,200,876	0	2,097,212	107,551	0	0	2,204,763
a. EPA Primacy for CO2 (Restricted/Biennial/OTO)												
	0	250,000	0	0	0	250,000	0	250,000	0	0	0	250,000
b. Educational Funding (Restricted/Biennial)												
	0	1,500,000	0	0	0	1,500,000	0	1,500,000	0	0	0	1,500,000
3. Conservation and Resource Development Division (23)												
	982,461	3,650,348	310,603	0	0	4,943,412	988,412	3,643,354	319,753	0	0	4,951,519
a. Drinking Water Loan Assistance (Restricted/OTO)												
	0	200,000	0	0	0	200,000	0	200,000	0	0	0	200,000
b. Montana Rural Water (OTO)												
	0	103,000	0	0	0	103,000	0	103,000	0	0	0	103,000
4. Water Resources Division (24)												

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
8,212,104	3,900,220	180,634	0	0	12,292,958	8,211,634	3,899,974	181,386	0	0	12,292,994
5. Reserved Water Rights Compact Commission (25)											
565,352	0	0	0	0	565,352	603,882	0	0	0	0	603,882
6. Forestry and Trust Lands (35)											
8,512,803	17,915,584	1,204,916	0	0	27,633,303	8,581,473	17,917,310	1,194,923	0	0	27,693,706
a. Biomass Project (Restricted/Biennial/OTO)											
100,000	0	0	0	0	100,000	100,000	0	0	0	0	100,000
b. Lease Payments (OTO)											
3,817	0	0	0	0	3,817	3,817	0	0	0	0	3,817
Total											
20,969,090	30,298,703	2,049,480	0	0	53,317,273	20,990,608	30,305,487	2,053,554	0	0	53,349,649

Centralized Services includes a reduction in general fund money of $54,015 in FY 2012 and $53,788 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

Education funding is restricted to the uses outlined in 82-11-111(7).

The department is appropriated up to $600,000 for the 2013 biennium from the natural resources operations account established in 15-38-301 for the purchase of prior liens on property held as loan security as provided in 85-1-615.

The department is appropriated up to $333,000 for the 2013 biennium from the coal bed methane protection account established in 76-15-904 for potential landowner or water right holder claims for emergency loss of water related to coal bed methane development.

The department is authorized to decrease federal special revenue in the pollution control and/or drinking water revolving fund loan programs and increase state special revenue by a like amount within administration accounts when the amount of federal EPA CAP grant funds allocated for administration of the grant have been expended or federal funds and bond proceeds will be used for other program purposes as authorized in law providing for the distribution of funds.

During the 2013 biennium, up to $1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account is appropriated to the department for repairing and replacing equipment at the Broadwater hydropower facility.

During the 2013 biennium, up to $100,000 of interest earned on the Broadwater users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion.

	Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
During the 2013 biennium, up to $500,000 of funds currently in or to be deposited in the state project hydropower earnings account is appropriated for the purpose of repairing, improving, or rehabilitating state water projects.											
If House Bill No. 587 is not passed and approved, state special revenue funding in Water Resources Division is increased by $100,000 in FY 2012 and $100,000 in FY 2013.											
If House Bill No. 610 is not passed and approved in a form that increases the fire protection fee, then Forestry and Trust Lands is increased by $1,893,487 of general fund in FY 2012 and $1,893,487 of general fund in FY 2013 and decreased by $1,893,487 in state special revenue in FY 2012 and by $1,893,487 in state special revenue in FY 2013.											
Lease Payments is restricted to reimbursing the veterans home trust for public use of the associated trust lands.											
The department is appropriated up to $23 million of funds in the 2013 biennium from the fire suppression account for the purpose of paying fire suppression costs.											
If Senate Bill No. 410 is passed and approved, the department is appropriated up to $60,885,000 for the 2013 biennium from the public land trust acquisition account for the purpose of carrying out the provisions of Senate Bill No. 410.											
DEPARTMENT OF AGRICULTURE (6201)											
1. Central Management Division (15)											
101,881	794,994	126,775	123,288	0	1,146,938	98,789	795,020	126,775	128,528	0	1,149,112
a. Legislative Audit (Restricted/Biennial)											
44,532	0	0	0	0	44,532	0	0	0	0	0	0
2. Agricultural Sciences Division (30)											
296,527	6,634,944	2,193,818	0	0	9,125,289	296,490	6,639,130	2,194,531	0	0	9,130,151
a. Analytical Lab Equipment (Biennial/OTO)											
0	25,000	0	0	0	25,000	0	0	0	0	0	0
b. Web Ag Product Registration System (Biennial/OTO)											
0	280,000	0	0	0	280,000	0	0	0	0	0	0
c. SB 126 — Ag Inspection Fees											
0	84,753	0	0	0	84,753	0	84,753	0	0	0	84,753
3. Agricultural Development Division (50)											

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
507,976	4,128,784	8,359	448,652	0	5,093,771	507,289	4,128,851	8,359	447,760	0	5,092,259
Total											
950,916	11,948,475	2,328,952	571,940	0	15,800,283	902,568	11,647,754	2,329,665	576,288	0	15,456,275

Central Management Division includes a reduction in general fund money of $1,233 in FY 2012 and $1,228 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

SB 126 — Ag Inspection Fees is contingent upon passage and approval of Senate Bill No. 126.

TOTAL SECTION C											
27,655,092	404,264,929	469,031,227	571,940	0	901,523,188	27,631,414	405,620,309	486,322,029	576,288	0	920,150,040

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
D. JUDICIAL BRANCH, LAW ENFORCEMENT, AND JUSTICE											
JUDICIARY (2110)											
1. Supreme Court Operations (01)											
8,875,990	190,669	122,932	0	0	9,189,591	8,915,022	190,669	122,989	0	0	9,228,680
a. Legislative Audit (Restricted/Biennial)											
46,687	0	0	0	0	46,687	0	0	0	0	0	0
b. Court Help Program (Restricted/Biennial/OTO)											
295,927	0	0	0	0	295,927	295,518	0	0	0	0	295,518
2. Boards and Commissions (02)											
265,170	73,934	0	0	0	339,104	265,386	74,167	0	0	0	339,553
a. Judicial Standards (Restricted/Biennial)											
19,143	0	0	0	0	19,143	5,857	0	0	0	0	5,857
3. Law Library (03)											
845,680	0	0	0	0	845,680	845,609	0	0	0	0	845,609
4. District Court Operations (04)											
25,013,770	227,078	0	0	0	25,240,848	25,102,216	227,265	0	0	0	25,329,481
a. Guardian Ad Litem (OTO)											
70,000	0	0	0	0	70,000	70,000	0	0	0	0	70,000
5. Water Courts Supervision (05)											
0	1,636,329	0	0	0	1,636,329	0	1,894,578	0	0	0	1,894,578
6. Clerk of Court (06)											
481,665	0	0	0	0	481,665	480,726	0	0	0	0	480,726
Total											
35,914,032	2,128,010	122,932	0	0	38,164,974	35,980,334	2,386,679	122,989	0	0	38,490,002

District Court Operations includes a reduction in general fund money of $37,906 in FY 2012 and $37,747 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

	Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

If House Bill No. 587 is not passed and approved, state special revenue funding in Water Courts Supervision is reduced by $200,000 in FY 2013.

CRIME CONTROL DIVISION (4107)

1. Justice System Support Service (01)											
1,265,516	12,847	719,623	0	0	1,997,986	1,263,347	12,847	723,283	0	0	1,999,477
a. Pass-Through Grants (Biennial)											
0	139,236	5,945,898	0	0	6,085,134	0	139,236	5,945,898	0	0	6,085,134
b. Juvenile Detention (Restricted/Biennial)											
931,923	0	0	0	0	931,923	931,923	0	0	0	0	931,923
Total											
2,197,439	152,083	6,665,521	0	0	9,015,043	2,195,270	152,083	6,669,181	0	0	9,016,534

The appropriation for Justice System Support Service is increased by $67,630 in general fund money, $200 state special revenue, and $19,378 in federal funds in fiscal year 2012 and $67,980 in general fund money, $201 state special revenue, and $19,478 in federal funds in fiscal year 2013 if House Bill No. 230 is not passed and approved.

Funding in Juvenile Detention may be used only for payments to counties for juvenile detention costs.

All pass-through grant authority is biennial. All remaining pass-through grant appropriations, up to $100,000 in general fund money, $180,000 in state special revenue, and $7 million in federal funds, including reversions, for the 2011 biennium are authorized to continue and are appropriated in fiscal year 2012 and fiscal year 2013.

DEPARTMENT OF JUSTICE (4110)

1. Legal Services Division (01)											
4,803,242	209,853	623,320	0	0	5,636,415	4,798,663	209,587	623,041	0	0	5,631,291
a. Major Litigation (Restricted)											
767,377	0	0	0	0	767,377	767,379	0	0	0	0	767,379
2. Office of Consumer Protection (02)											
0	861,226	0	0	0	861,226	0	859,809	0	0	0	859,809

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Gambling Control Division (07)												
	0	2,876,313	0	1,232,703	0	4,109,016	0	2,877,834	0	1,233,288	0	4,111,122
a. IT Web Entry (Biennial/OTO)												
	0	50,000	0	0	0	50,000	0	0	0	0	0	0
4. Motor Vehicle Division (12)												
	7,513,412	8,850,648	0	965,171	0	17,329,231	7,511,729	8,848,414	0	614,715	0	16,974,858
a. MVD Base Adjustments (OTO)												
	54,363	36,242	0	0	0	90,605	12,000	8,000	0	0	0	20,000
b. MVD Debt Payment to BOI (Biennial)												
	0	1,850,000	0	0	0	1,850,000	0	1,850,000	0	0	0	1,850,000
5. Highway Patrol Division (13)												
	0	31,900,700	0	0	0	31,900,700	0	31,709,494	0	0	0	31,709,494
6. Division of Criminal Investigation (18)												
	5,644,472	3,096,052	866,243	0	0	9,606,767	6,033,196	3,095,269	867,952	0	0	9,996,417
a. DCI Legal Assistance (Restricted)												
	0	0	0	0	0	0	100,000	0	0	0	0	100,000
b. Criminal Justice Info Network (Biennial/OTO)												
	0	575,000	0	0	0	575,000	0	575,000	0	0	0	575,000
7. Central Services Division (28)												
	506,208	781,491	0	77,406	0	1,365,105	508,037	778,568	0	77,348	0	1,363,953
a. Legislative Audit (Restricted/Biennial)												
	29,664	38,140	0	4,022	0	71,826	0	0	0	0	0	0
8. Information Technology Services Division (29)												
	3,492,298	133,730	2,505	14,824	0	3,643,357	3,489,288	133,620	2,502	14,811	0	3,640,221
9. Forensic Sciences Division (32)												
	3,428,666	326,068	0	0	0	3,754,734	3,446,649	327,687	0	0	0	3,774,336
a. FSD Equipment (OTO)												
	150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
26,389,702	51,585,463	1,492,068	2,294,126	0	81,761,359	26,816,941	51,273,282	1,493,495	1,940,162	0	81,523,880

Division of Criminal Investigation includes a reduction in general fund money of $38,584 in FY 2012 and $38,422 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

Funding in DCI Legal Assistance may be used only for contracted legal services in support of the Child Sexual Predator Unit and Prescription Drug Diversion Enforcement Unit.

PUBLIC SERVICE COMMISSION (4201)

1. Public Service Regulation Program (01)											
0	3,572,375	106,511	0	0	3,678,886	0	3,577,734	105,434	0	0	3,683,168
a. Legislative Audit (Restricted/Biennial)											
0	22,984	0	0	0	22,984	0	0	0	0	0	0
Total											
0	3,595,359	106,511	0	0	3,701,870	0	3,577,734	105,434	0	0	3,683,168

OFFICE OF STATE PUBLIC DEFENDER (6108)

1. Office of State Public Defender (01) (Biennial)											
21,041,412	100,000	0	0	0	21,141,412	21,058,747	75,000	0	0	0	21,133,747
a. Legislative Audit (Restricted/Biennial)											
57,461	0	0	0	0	57,461	0	0	0	0	0	0
b. Office of Public Defender (Restricted/OTO)											
300,000	0	0	0	0	300,000	300,000	0	0	0	0	300,000
c. Death Penalty Cases (Restricted/Biennial/OTO)											
500,000	0	0	0	0	500,000	400,000	0	0	0	0	400,000
d. SB 15 — Misdemeanor Aggravated DUI											
85,500	0	0	0	0	85,500	85,500	0	0	0	0	85,500

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
e. SB 187 — Revise Public Defender Laws											
0	0	0	0	0	0	0	111,144	0	0	0	111,144
2. Office of Appellate Defender (02) (Biennial)											
964,641	0	0	0	0	964,641	964,140	0	0	0	0	964,140
Total											
22,949,014	100,000	0	0	0	23,049,014	22,808,387	186,144	0	0	0	22,994,531

Funding in Office of Public Defender may be used only to support contracted services or replacement of computers, servers, or copiers.

Office of State Public Defender includes a reduction in general fund money of $11,475 in FY 2012 and $11,426 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

Death Penalty Cases is restricted for the purpose of death penalty case costs until September 1, 2012. After September 1, 2012, any remaining funds available for the appropriation may be used for any purpose consistent with the mission of the agency.

SB 15 — Misdemeanor Aggravated DUI is contingent on passage and approval of Senate Bill No. 15.

SB 187 — Revise Public Defender Laws is contingent on passage and approval of Senate Bill No. 187.

DEPARTMENT OF CORRECTIONS (6401)

1. Administrative and Support Services (01) (Biennial)											
15,863,592	511,965	0	98,022	0	16,473,579	15,879,109	505,609	0	96,796	0	16,481,514
a. Legislative Audit (Restricted/Biennial)											
111,330	0	0	0	0	111,330	0	0	0	0	0	0
b. Victim Information and Notification (OTO)											
34,790	0	0	0	0	34,790	19,790	0	0	0	0	19,790
2. Adult Community Corrections (02) (Biennial)											
60,113,406	1,267,521	0	0	0	61,380,927	60,354,173	1,264,733	0	0	0	61,618,906
3. Secure Custody Facilities (03) (Biennial)											
73,535,468	129,168	9,173	0	0	73,673,809	73,588,148	129,168	9,173	0	0	73,726,489

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Secure Care Population Growth (Restricted)	0	0	0	0	0	0	2,979,130	0	0	0	0	2,979,130
b. Security Control System (Biennial/OTO)	125,000	0	0	0	0	125,000	125,000	0	0	0	0	125,000
c. Educational Cost Person Exonerated per 53-1-214, MCA (Restricted/OTO)	14,500	0	0	0	0	14,500	0	0	0	0	0	0
d. MSP Equipment (Biennial/OTO)	37,500	0	0	0	0	37,500	37,500	0	0	0	0	37,500
4. Montana Correctional Enterprises (04) (Biennial)	793,181	1,994,778	0	591,437	0	3,379,396	792,600	1,994,571	0	592,358	0	3,379,529
5. Youth Services (05) (Biennial)	17,514,287	852,092	11,699	0	0	18,378,078	17,529,910	852,878	11,699	0	0	18,394,487
a. Juvenile Reentry Services (Restricted)	607,800	0	0	0	0	607,800	607,800	0	0	0	0	607,800
b. RYCF Security Cameras (Biennial/OTO)	37,500	0	0	0	0	37,500	37,500	0	0	0	0	37,500
Total	168,788,354	4,755,524	20,872	689,459	0	174,254,209	171,950,660	4,746,959	20,872	689,154	0	177,407,645

Administrative and Support Services includes a reduction in general fund money of $316,471 in FY 2012 and $315,140 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

Secure Custody Facilities includes $18,000 of general fund money in fiscal year 2012 and $10,000 of general fund money in fiscal year 2013 that is contingent upon the Montana state prison receiving national commission on correctional health care accreditation prior to the end of fiscal year 2011.

Secure Custody Facilities includes $200,750 general fund money each year that may be used only to support an increase in rates for privately owned secure prison facility beds located within Montana.

Funding in Secure Care Population Growth may be used only to support secure assisted living beds and secure contract beds.

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Funding in juvenile reentry services may be used only to support mentor grants, guide homes, parish nurses, two aftercare coordinators, and other juvenile reentry services.

TOTAL SECTION D											
256,238,541	62,316,439	8,407,904	2,983,585	0	329,946,469	259,751,592	62,322,881	8,411,971	2,629,316	0	333,115,760

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
					E. EDUCATION							
OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)												
1. OPI Administration (06)	8,723,328	236,503	18,357,310	0	0	27,317,141	8,728,746	236,692	16,141,846	0	0	25,107,284
a. National Student Clearinghouse (Restricted)	7,600	0	0	0	0	7,600	7,600	0	0	0	0	7,600
b. Montana Digital Academy (Restricted)	1,168,000	0	0	0	0	1,168,000	1,168,000	0	0	0	0	1,168,000
2. Distribution to Public Schools (09)	0	0	139,400,673	0	0	139,400,673	0	0	143,050,673	0	0	143,050,673
a. BASE Aid (Restricted/Biennial)	485,441,752	0	0	0	0	485,441,752	526,495,288	0	0	0	0	526,495,288
b. Special Education (Restricted/Biennial)	41,647,331	0	0	0	0	41,647,331	41,647,331	0	0	0	0	41,647,331
c. Transportation (Restricted/Biennial)	12,621,927	0	0	0	0	12,621,927	12,721,927	0	0	0	0	12,721,927
d. School Facility Reimbursement (Restricted/Biennial)	0	8,586,000	0	0	0	8,586,000	0	8,586,000	0	0	0	8,586,000
e. School Food (Restricted/Biennial)	663,861	0	0	0	0	663,861	676,386	0	0	0	0	676,386
f. HB 124 Block Grants (Restricted/Biennial)	52,150,510	0	0	0	0	52,150,510	52,150,510	0	0	0	0	52,150,510
g. State Tuition Payments (Restricted/Biennial)	639,308	0	0	0	0	639,308	639,308	0	0	0	0	639,308
h. Advancing Agricultural Ed in Montana (Restricted/Biennial)	128,957	0	0	0	0	128,957	128,960	0	0	0	0	128,960
i. Traffic Safety Distribution (Restricted/Biennial)												

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
0	750,000	0	0	0	750,000	0	750,000	0	0	0	750,000
j. At-Risk Student Payment (Restricted/Biennial)											
5,000,000	0	0	0	0	5,000,000	5,000,000	0	0	0	0	5,000,000
k. In-State Treatment (Restricted/Biennial)											
787,800	0	0	0	0	787,800	787,800	0	0	0	0	787,800
l. Secondary Vo-ed (Restricted/Biennial)											
1,000,000	0	0	0	0	1,000,000	1,000,000	0	0	0	0	1,000,000
m. Adult Basic Education (Restricted/Biennial)											
525,000	0	0	0	0	525,000	525,000	0	0	0	0	525,000
n. Gifted and Talented (Restricted/Biennial)											
250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
o. Multidistrict Cooperatives (Restricted/Biennial/OTO)											
1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0
Total											
611,755,374	9,572,503	157,757,983	0	0	779,085,860	651,926,856	9,572,692	159,192,519	0	0	820,692,067

OPI Administration includes a reduction in general fund money of $9,902 in FY 2012 and $9,860 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

All revenue up to $1.1 million in FY 2012 and $1.1 million in FY 2013 in the traffic education account for distribution to schools under the provisions of 20-7-506 and 61-5-121 is appropriated as provided in Title 20, chapter 7, part 5.

All appropriations for federal special revenue programs in state level activities and in local education activities and all general fund appropriations in local educational activities are biennial.

If a bill that eliminates the growth in HB 124 block grants is not passed and approved, HB 124 Block Grants is increased by $396,344 general fund in FY 2012 and by $795,700 general fund in FY 2013.

The general fund appropriation for BASE Aid is increased by $5,647,742 in FY 2012 and is decreased by $7,589,936 in FY 2013 if Senate Bill No. 329 is not passed and approved in a form that:

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) provides for an inflation factor for basic and total per-ANB entitlements of at least 1.0% in FY 2012 and at least 2.43% in FY 2013; and

(2) allocates revenue from school districts' excess oil and natural gas production taxes to the state special revenue guarantee account provided for in 20-9-622. For the purpose of this subsection (2), excess oil and natural gas production taxes means revenue in excess of 130% of a school district's maximum budget.

The office of public instruction may distribute funds from the appropriation for In-State Treatment to public school districts for the purpose of providing for educational costs of children with significant behavioral or physical needs.

Multidistrict Cooperatives is contingent on passage and approval of Senate Bill No. 329.

Advancing Agricultural Ed in Montana is contingent on passage and approval of House Bill No. 611.

BOARD OF PUBLIC EDUCATION (5101)

1. Administration (01)											
216,664	187,920	0	0	0	404,584	222,033	188,322	0	0	0	410,355
Total											
216,664	187,920	0	0	0	404,584	222,033	188,322	0	0	0	410,355

SCHOOL FOR THE DEAF AND BLIND (5113)

1. Administration Program (01)											
444,245	3,758	0	0	0	448,003	443,981	3,946	0	0	0	447,927
a. Legislative Audit (Restricted/Biennial)											
37,709	0	0	0	0	37,709	0	0	0	0	0	0
2. General Services Program (02)											
454,393	0	0	0	0	454,393	455,168	0	0	0	0	455,168
3. Student Services (03)											
1,385,289	0	15,393	0	0	1,400,682	1,386,513	0	15,393	0	0	1,401,906
4. Education (04)											
3,676,141	283,115	48,522	0	0	4,007,778	3,679,232	283,115	48,522	0	0	4,010,869

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total											
5,997,777	286,873	63,915	0	0	6,348,565	5,964,894	287,061	63,915	0	0	6,315,870

Administration Program includes a reduction in general fund money of $12,340 in FY 2012 and $12,288 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

MONTANA ARTS COUNCIL (5114)

1. Promotion of the Arts (01)											
432,933	204,342	3,817	0	0	641,092	444,893	201,903	4,228	0	0	651,024
a. Legislative Audit (Restricted/Biennial)											
21,548	0	0	0	0	21,548	0	0	0	0	0	0
b. Federal Funds (Biennial)											
0	0	798,296	0	0	798,296	0	0	798,672	0	0	798,672
Total											
454,481	204,342	802,113	0	0	1,460,936	444,893	201,903	802,900	0	0	1,449,696

MONTANA STATE LIBRARY COMMISSION (5115)

1. Statewide Library Resources (01)											
2,527,879	763,323	408,026	0	0	3,699,228	2,533,782	763,323	408,026	0	0	3,705,131
a. Legislative Audit (Restricted/Biennial)											
21,548	0	0	0	0	21,548	0	0	0	0	0	0
b. LSTA and State Share (Restricted/Biennial)											
102,830	0	1,200,000	0	0	1,302,830	102,830	0	200,000	0	0	302,830
c. Continuing Education and Certification (Biennial/OTO)											
0	3,600	0	0	0	3,600	0	0	0	0	0	0
Total											
2,652,257	766,923	1,608,026	0	0	5,027,206	2,636,612	763,323	608,026	0	0	4,007,961

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
MONTANA HISTORICAL SOCIETY (5117)												
1. Administration Program (01)												
	909,173	90,408	100,818	359,552	0	1,459,951	915,826	90,408	100,818	359,552	0	1,466,604
a. Legislative Audit (Restricted/Biennial)												
	39,504	0	0	0	0	39,504	0	0	0	0	0	0
b. HB 477 — Historical Interpretation and Scriver Collection Costs												
	0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
2. Research Center (02)												
	1,034,862	0	0	69,654	0	1,104,516	1,036,075	0	0	69,654	0	1,105,729
a. HB 477 — Historical Interpretation and Scriver Collection Costs												
	0	65,000	0	0	0	65,000	0	65,000	0	0	0	65,000
3. Museum Program (03)												
	444,524	674	0	12,631	0	457,829	444,362	674	0	12,631	0	457,667
a. Care and Conservation of Artifacts (Restricted/Biennial)												
	95,000	0	0	0	0	95,000	0	0	0	0	0	0
b. HB 477 — Historical Interpretation and Scriver Collection Costs												
	0	297,036	0	0	0	297,036	0	305,518	0	0	0	305,518
4. Publications (04)												
	140,047	0	0	300,082	0	440,129	141,826	0	0	298,669	0	440,495
5. Education Program (05)												
	285,881	0	0	34,077	0	319,958	285,754	0	0	34,077	0	319,831
a. HB 477 — Historical Interpretation and Scriver Collection Costs												
	0	89,500	0	0	0	89,500	0	95,231	0	0	0	95,231
6. Historic Preservation Program (06)												
	29,046	0	659,800	16,687	0	705,533	32,252	0	664,500	16,687	0	713,439
Total												

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2,978,037	567,618	760,618	792,683	0	5,098,956	2,856,095	581,831	765,318	791,270	0	4,994,514

Administration Program includes a reduction in general fund money of $2,952 in FY 2012 and $2,939 in FY 2013. The agency may allocate this reduction in funding among programs when developing 2013 biennium operating plans.

If House Bill No. 477 is not passed and approved, the items for HB 477 — Historical Interpretation and Scriver Collection Costs are void.

MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)

1. OCHE — Administration (01)											
2,279,706	0	446,274	74,379	0	2,800,359	2,271,736	0	446,537	74,422	0	2,792,695
a. Legislative Audit (Restricted/Biennial)											
57,461	0	0	0	0	57,461	0	0	0	0	0	0
2. OCHE — Student Assistance Program (02)											
9,901,940	101,895	3,066,239	0	0	13,070,074	10,149,860	101,824	3,066,239	0	0	13,317,923
3. OCHE — Improving Teacher Quality (03)											
0	0	239,560	0	0	239,560	0	0	256,560	0	0	256,560
4. OCHE — Community College Assistance (04) (Biennial)											
10,953,504	0	0	0	0	10,953,504	10,905,955	0	0	0	0	10,905,955
a. Legislative Audit (Restricted/Biennial)											
61,316	0	0	0	0	61,316	0	0	0	0	0	0
5. OCHE — Educational Outreach and Diversity (06)											
68,745	0	6,682,034	0	0	6,750,779	68,584	0	5,986,810	0	0	6,055,394
6. OCHE — Workforce Development Program (08)											
90,067	0	6,265,118	0	0	6,355,185	90,067	0	6,256,568	0	0	6,346,635
7. OCHE — Appropriation Distribution Transfers (09)											
132,028,209	18,883,238	0	0	0	150,911,447	131,715,482	20,330,748	0	0	0	152,046,230
a. Legislative Audit (Restricted/Biennial)											
532,541	0	0	0	0	532,541	0	0	0	0	0	0
b. Agricultural Experiment Station											

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
12,455,424	0	0	0	0	12,455,424	12,506,141	0	0	0	0	12,506,141
c. Extension Service											
5,338,715	0	0	0	0	5,338,715	5,339,571	0	0	0	0	5,339,571
d. Forest and Conservation Experiment Station											
1,011,216	0	0	0	0	1,011,216	1,012,592	0	0	0	0	1,012,592
e. Bureau of Mines and Geology											
3,356,185	841,886	0	0	0	4,198,071	3,357,538	841,886	0	0	0	4,199,424
f. Fire Services Training School											
737,849	0	0	0	0	737,849	739,112	0	0	0	0	739,112
g. Educational Units (Restricted/Biennial/OTO)											
4,855,152	0	0	0	0	4,855,152	4,380,153	0	0	0	0	4,380,153
h. MUS Research (Restricted/Biennial/OTO)											
1,500,000	0	0	0	0	1,500,000	2,000,000	0	0	0	0	2,000,000
i. PBS (Restricted)											
150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
8. Tribal College Assistance Program (11) (Biennial)											
842,085	0	0	0	0	842,085	842,085	0	0	0	0	842,085
9. OCHE — Guaranteed Student Loan Program (12)											
0	0	38,107,073	0	0	38,107,073	0	0	44,613,630	0	0	44,613,630
a. Legislative Audit (Restricted/Biennial)											
0	0	14,365	0	0	14,365	0	0	0	0	0	0
10. OCHE — Board of Regents (13)											
45,737	0	0	0	0	45,737	45,737	0	0	0	0	45,737
Total											
186,265,852	19,827,019	54,820,663	74,379	0	260,987,913	185,574,613	21,274,458	60,626,344	74,422	0	267,549,837

Items designated as OCHE—Administration (01), Student Assistance Program (02), Improving Teacher Quality (03), Educational Outreach and Diversity (06), Workforce Development Program (08), Appropriation Distribution Transfers (09) [excluding Agriculture Experiment Station, Extension Service, Forest and

	Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Conservation Experiment Station, Bureau of Mines and Geology, and Fire Services Training School], Guaranteed Student Loan Program (12), and Board of Regents (13) are a single biennial lump-sum appropriation.

General fund money, state and federal special revenue, and proprietary fund revenue appropriated to the board of regents are included in all Montana university system programs (5100). All other public funds received by units of the Montana university system (other than plant funds appropriated in House Bill No. 5, relating to long-range building) are appropriated to the board of regents and may be expended under the provisions of 17-7-138(2). The board of regents shall allocate the appropriations to individual university system units, as defined in 17-7-102(13), according to board policy.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the office of budget and program planning and the legislative fiscal division banner access to the entire university system's banner information system, except for information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

The Montana university system shall provide the electronic data required for human resource data for the current unrestricted operating funds into the MBARS system. The salary and benefit data provided must reflect approved board of regents operating budgets.

The variable cost of education for each full-time equivalent student at the community colleges, including Summitnet, is $1,872 each year of the 2013 biennium. The general fund appropriation for OCHE—Community College Assistance (04) provides 50.8% of the fixed costs of education plus 50.8% of the variable cost of education for each full-time equivalent student in fiscal year 2012 and 50.8% of the fixed cost of education plus 50.8% of the variable costs of education for each full-time equivalent student in fiscal year 2013. The remaining percentage of the budget must be paid from funds other than those appropriated for OCHE—Community College Assistance.

The general fund appropriation for OCHE—Community College Assistance (04) is calculated to fund education in the community colleges for an estimated 2,858 resident FTE students in fiscal year 2012 and 2,808 resident FTE students in fiscal year 2013. If total resident FTE student enrollment in the community colleges is greater than the estimated number for the biennium, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than the estimated number for the biennium, the community colleges shall revert general fund money to the state in accordance with 17-7-142.

Total audit costs are estimated to be $120,700 for the community colleges for the biennium. The general fund appropriation for each community college provides 50.8% of the total audit costs in the 2013 biennium. The remaining 49.2% of these costs must be paid from funds other than those appropriated for OCHE—Community College Assistance. Audit costs for the biennium may not exceed $38,900 for Dawson, $38,900 for Miles, and $42,900 for Flathead Valley community college.

Revenue anticipated to be received by the Montana university system units and colleges of technology include interest earnings and other revenue of $897,834 for fiscal year 2012 and $898,509 for fiscal year 2013. These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in OCHE—Appropriation Distribution Transfers.

	Fiscal 2012						Fiscal 2013					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Revenue anticipated to be received by the agriculture experiment station includes:

(1) interest earnings and other revenue of $8,500 each year of the 2013 biennium; and

(2) federal revenue of $2,430,301 each year of the 2013 biennium.

These amounts are appropriated for current unrestricted operating expenses and are in addition to that shown in OCHE—Appropriation Distribution Transfers.

Revenue anticipated to be received by the extension services includes:

(1) interest earnings of $1,500 each year of the 2013 biennium; and

(2) federal revenue of $2,341,763 each year of the 2013 biennium.

These amounts are appropriated for current unrestricted operating expenses and are in addition to that shown in OCHE—Appropriation Distribution Transfers.

Anticipated interest revenue of $2,000 in each year of the 2013 biennium is appropriated to the forest and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in OCHE—Appropriation Distribution Transfers.

Anticipated sales revenue of $48,000 in each year of the 2013 biennium is appropriated to the bureau of mines and geology for current unrestricted operating expenses. This amount is in addition to that shown in OCHE—Appropriation Distribution Transfers.

Anticipated interest revenue of $200 each year of the 2013 biennium is appropriated to fire services training school for current unrestricted operating expenses. This amount is in addition to that shown in OCHE—Appropriation Distribution Transfers.

OCHE—Appropriation Distribution Transfers includes $1,862,756 for the 2013 biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $196,806 in fiscal year 2012 and $196,806 in fiscal year 2013; Montana tech of the university of Montana, $84,472 in fiscal year 2012 and $84,472 in fiscal year 2013; western Montana college of the university of Montana, $67,540 in fiscal year 2012 and $67,540 in fiscal year 2013; Helena college of technology of the university of Montana, $27,723 in fiscal year 2012 and $27,723 in fiscal year 2013; Montana state university-Bozeman, $250,985 in fiscal year 2012 and $250,985 in fiscal year 2013; Montana state university-Billings, $159,561 in fiscal year 2012 and $155,061 in fiscal year 2013; Montana state university-northern, $67,441 in fiscal year 2012 and $52,641 in fiscal year 2013; and Montana state university-Great Falls college of technology, $86,500 in fiscal year 2012 and $86,500 in fiscal year 2013.

The Montana university system shall pay $88,506 for the 2013 biennium in current funds in support of the Montana natural resource information system (NRIS) located at the Montana state library. Quarterly payments must be made upon receipt of the bills from the state library, up to the total amount appropriated.

Fiscal 2012						Fiscal 2013					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
TOTAL SECTION E											
810,320,442	31,413,198	215,813,318	867,062	0	1,058,414,020	849,625,996	32,869,590	222,059,022	865,692	0	1,105,420,300
TOTAL STATE FUNDING											
1,592,875,951	731,714,521	2,078,673,487	14,788,455	0	4,418,052,414	1,645,128,230	736,120,508	2,129,638,486	14,338,762	0	4,525,225,986

Section 10. Rates. Internal service fund type fees and charges established by the legislature for the 2013 biennium in compliance with 17-7-123(1)(f)(ii) are as follows:

	Fiscal 2012	Fiscal 2013
DEPARTMENT OF REVENUE — 5801		
1. Business and Income Taxes Division		
Delinquent Account Collection Fee (percent of amount collected)	5%	5%
DEPARTMENT OF ADMINISTRATION — 6101		
1. Director's Office		
a. Management Services		
Total Allocation of Costs, excluding portion of unit for HR	$903,354	$902,951
Portion of Unit for Human Resources Charges Per FTE of User Programs	$574	$570
2. State Accounting Division		
a. SABHRS Finance and Budget Bureau		
SABHRS Services Fee (total allocation of costs)	$3,554,526	$3,795,313
b. Warrant Writer		
Mailer	$0.7439	$0.7446
Nonmailer	$0.2839	$0.2846
Emergency	$14.1129	$14.1136
Duplicates	$3.3542	$3.3549
Externals		
Externals - Payroll	$0.2051	$0.2124
Externals - Other	$0.1386	$0.1391
Direct Deposit		
Direct Deposit - Mailer	$0.8186	$0.8291
Direct Deposit - No Advice Printed	$0.1386	$0.1391
Unemployment Insurance		
Mailer - Print Only	$0.1453	$0.1456
Direct Deposit - No Advice Printed	$0.0477	$0.0478
3. General Services Division		
a. Facilities Management Bureau		
Office Rent (per sq. ft.)	$8.412	$8.460
Warehouse Rent (per sq. ft.)	$4.844	$4.876
Grounds Maintenance (per sq. ft)	$0.494	$0.494
Project Management - In-house	15%	15%
Project Management - contracted	5%	5%

$2,392,500 of revenue collected related to Facilities Management rates is to be deposited into a state special revenue fund. These types of projects are appropriated in House Bill No. 5 for major maintenance projects on the capitol complex.

b. Print and Mail Services		
Internal Printing		
Impression Cost		
1-20	$0.0762	$0.0762
21-100	$0.0336	$0.0336

	Fiscal 2012	Fiscal 2013
101-1000	$0.0193	$0.0193
1001-5000	$0.0078	$0.0078
5000+	$0.0039	$0.0039
Color Copy		
8 ½ x 11	$0.25	$0.25
11 x 17	$0.50	$0.50
Ink		
Black per Sheet	$0.0002	$0.0002
Color	$15.00	$15.00
Special Mix	$25.00	$25.00
Large Format Color per ft.	$12.70	$12.70
Collating Machine	$0.0072	$0.0072
Collating Hand	$0.60	$0.60
Stapling Hand	$0.018	$0.018
Stapling In-line	$0.012	$0.012
Saddle Stitch	$0.036	$0.036
Folding (base + per sheet)	$12.00 + $0.006	$12.00 + 0.006
Folding Rt Angle (base + per sheet)	$12.00 + $0.006	$12.00 + 0.006
Folding In-line	$0.036	$0.036
Punching Standard 3-hole	$0.0012	$0.0012
Punching Nonstandard (base + per sheet)	$3.60 + $0.0012	$3.60 + 0.0012
Cutting	$0.66	$0.66
Padding	$0.0024	$0.0024
Scoring, perf, num (setup + duplicating rate)	$6.00 + Dup Rate	$6.00 + Dup Rate
Perfect Binding (setup + per sheet)	$18.00 + $0.66	$18.00 + $0.66
Spiral Binding	$0.69	$0.69
Laminating		
8 ½ x 11	$0.57	$0.57
11 x 17	$0.85	$0.85
Tape Binding	$0.60	$0.60
Tabs	$0.60	$0.60
Transparencies	$0.60	$0.60
Shrink Wrapping	$0.30	$0.30
Hand Work Production	$0.60	$0.60
Overtime	$22.15	$22.15
Desktop	$46.36	$46.36
Scan	$9.52	$9.52
Proof	$0.25	$0.25
Programming	$45.46	$45.46
File Transfer	$22.73	$22.73
Variable Data	$0.009	$0.009
Mainframe Printing	$0.069	$0.069
CD Duplicating	$1.75	$1.75

	Fiscal 2012	Fiscal 2013
DVD Duplicating	$3.50	$3.50
Silver Plates		
8 ½ x 11	$9.20	$9.20
11 x 17	$10.35	$10.35
CTP Plates		
8 ½ x 11	$9.20	$9.20
11 x 17	$10.35	$10.35
External Printing		
Percent of Invoice markup	6.73%	6.73%
Photocopy Pool		
Percent of Invoice markup	15.9%	15.9%
Mail Preparation		
Tabbing	$0.021	$0.021
Labeling	$0.021	$0.021
Ink Jet	$0.034	$0.034
Inserting	$0.030	$0.030
Winsort	$0.062	$0.062
Permit Mailings	$0.062	$0.062
Mail Operations		
Machinable	$0.043	$0.043
Nonmachinable	$0.080	$0.080
Seal Only	$0.020	$0.020
Postcards	$0.049	$0.049
Certified Mail	$0.614	$0.614
Registered Mail	$0.614	$0.614
International Mail	$0.400	$0.400
Flats	$0.110	$0.110
Priority	$0.614	$0.614
Express Mail	$0.614	$0.614
USPS Parcels	$0.400	$0.400
Insured Mail	$0.614	$0.614
Media Mail	$0.307	$0.307
Standard Mail	$0.200	$0.200
Postage Due	$0.061	$0.061
Fee Due	$0.061	$0.061
Tapes	$0.245	$0.245
Express Services	$0.500	$0.500
Interagency Mail	$297,657 yearly	$297,657 yearly
Postal Contract (Capitol)	$38,976 yearly	$38,976 yearly
c. Central Stores Program		
Markup as a Percentage of Retail Cost of Goods Sold	25%	25%
4. Information Technology Services Division		
a. Enterprise Services	$6,166,189	$6,195,048

	Fiscal 2012	Fiscal 2013
b. Web Content Management — Sharp Content — Primary Domain — Initial Setup One-time Charge	$600	$600
c. Web Content Management — Sharp Content — Subsite — Initial Setup One-Time per Setup per Subsite Domain	$100	$100
d. GIS Services — GIS Data Services — BMSC SSITSD Managed per Service per Application per Year	$350	$350
e. GIS Services — GIS Data Services — Customer Managed per Service per Year	$800	$800
f. GIS Services — Direct Connectivity per Connection	$3,600	$3,600
g. Voice Services — Dial Tone (Either)		
i. Per Phone per Year	$13.37	$13.19
ii. Per Phone per Month	$1.11	$1.10
h. Voice Services — Installation Fee to Add a New Phone or Move an Existing Phone per Phone	$132.64	$44.16
i. E-mail — E-mail Mailbox (Either)		
i. Per E-mail Box per Year	$46.28	$46.14
ii. Per E-mail Box per Month	$3.86	$3.84
Operations for the remaining portion of the division with rates maintained and based upon the financial transparency model	30-Day Working Capital Reserve	
5. Health Care and Benefits Division		
a. Workers' Compensation Management Program		
Administrative Fee (per payroll warrant per pay period)	$1.09	$1.08
6. State Human Resources Division		
a. Intergovernmental Training		
Type of service		
Open enrollment courses		
Two-day course, per participant	188	190
One-day course, per participant	120	123
Half-day course, per participant	93	95
Eight-day management series	565	570
Six-day management series	435	440
Four-day administrative assistant series	330	333
Contract courses		
Full day of training, flat fee	825	830
Half day of training, flat fee	565	570
b. Human Resources Information System Fee		
Per payroll warrant advice per pay period	$8.06	$8.10
7. Risk Management & Tort Defense		
Auto Liability, Comprehensive, and Collision (total allocation to agencies)	$1,135,000	$1,135,000
Aviation (total allocation to agencies)	$212,451	$212,451
General Liability (total allocation to agencies)	$6,750,000	$6,750,000
Property/Miscellaneous (total allocations to agencies)	$4,200,000	$4,200,000

	Fiscal 2012	Fiscal 2013
DEPARTMENT OF COMMERCE — 6501		
1. Board of Investments		
For the purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investments as follows:		
a. Administration Charge (total)	$4,831,041	$4,831,041
2. Director's Office/Management Services		
a. Management Services Indirect Charge Rate		
State	12.95%	12.95%
Federal	12.95%	12.95%
DEPARTMENT OF LABOR AND INDUSTRY — 6602		
1. Centralized Services Division		
a. Office of Information Technology	$42 per direct hour of service $161 a month per active directory	
b. Cost Allocation Plan	8.24%	8.26%
c. Hearing Bureau		
Administrative Law Judge	$90	$90
Paralegal	$50	$50
d. Office of Legal Services	$95	$95
DEPARTMENT OF FISH, WILDLIFE, & PARKS — 5201		
1. Vehicle and Aircraft Rates		
Per Mile Rates		
a. Sedans	$0.46	$0.46
b. Vans	$0.53	$0.53
c. Utilities	$0.58	$0.58
d. Pickup 1/2 ton	$0.53	$0.53
e. Pickup 3/4 ton	$0.61	$0.61
Per Hour Rates		
f. Two-Place Single Engine	$108.07	$108.07
g. Partnavia	$514.56	$514.56
h. Turbine Helicopters	$576.10	$576.10
2. Duplicating Center		
Per Copy		
a. 1-20	$0.065	$0.070
b. 21-100	$0.050	$0.055
c. 101 - 1,000	$0.045	$0.050
d. 1,001- 5,000	$0.040	$0.045
e. color copies	$0.250	$0.250
Bindery		
a. Collating (per sheet)	$0.010	$0.010
b. Hand Stapling (per set)	$0.020	$0.020
c. Saddle Stitch (per set)	$0.035	$0.035
d. Folding (per set)	$0.010	$0.010
e. Punching (per set)	$0.005	$0.005
f. Cutting (per minute)	$0.600	$0.600
3. Warehouse Overhead Rate	24%	26%

	Fiscal 2012	Fiscal 2013
DEPARTMENT OF ENVIRONMENTAL QUALITY — 5301		
Indirect Rate		
a. Personal Services	24%	24%
b. Operating Expenditures	4%	4%
DEPARTMENT OF TRANSPORTATION — 5401		
1. State Motor Pool		
In the motor pool program, if the price of gasoline goes above $3.35, Tier 2 rates may be charged if approved by the Office of Budget and Program Planning. If the price of gasoline goes above $3.85, Tier 3 rates may be charged if approved by the Office of Budget and Program Planning.		
Tier one		
a. Class 02 (small utilities)		
Per Hour Assigned	$1.265	$1.271
Per Mile Operated	$0.155	$0.156
b. Class 03 (hybrid SUV)		
Per Hour Assigned	$1.685	$1.689
Per Mile Operated	$0.101	$0.101
c. Class 04 (large utilities)		
Per Hour Assigned	$1.990	$1.998
Per Mile Operated	$0.205	$0.206
d. Class 05 (hybrid sedans)		
Per Hour Assigned	$1.477	$1.483
Per Mile Operated	$0.072	$0.072
e. Class 06 (midsize compacts)		
Per Hour Assigned	$1.278	$1.285
Per Mile Operated	$0.134	$0.134
f. Class 07 (small pickups)		
Per Hour Assigned	$1.343	$1.348
Per Mile Operated	$0.200	$0.201
g. Class 11 (large pickups)		
Per Hour Assigned	$1.352	$1.358
Per Mile Operated	$0.222	$0.223
h. Class 12 (vans - all types)		
Per Hour Assigned	$1.283	$1.289
Per Mile Operated	$0.183	$0.184
Tier two (contingent $3.35/gallon)		
a. Class 02 (small utilities)		
Per Hour Assigned	$1.265	$1.271
Per Mile Operated	$0.178	$0.179
b. Class 03 (hybrid SUV)		
Per Hour Assigned	$1.685	$1.689
Per Mile Operated	$0.116	$0.117
c. Class 04 (large utilities)		
Per Hour Assigned	$1.990	$1.998
Per Mile Operated	$0.237	$0.238

	Fiscal 2012	Fiscal 2013
d. Class 05 (hybrid sedans)		
Per Hour Assigned	$1.477	$1.483
Per Mile Operated	$0.083	$0.083
e. Class 06 (midsize compacts)		
Per Hour Assigned	$1.278	$1.285
Per Mile Operated	$0.153	$0.154
f. Class 07 (small pickups)		
Per Hour Assigned	$1.343	$1.348
Per Mile Operated	$0.229	$0.230
g. Class 11 (large pickups)		
Per Hour Assigned	$1.352	$1.358
Per Mile Operated	$0.253	$0.255
h. Class 12 (vans - all types)		
Per Hour Assigned	$1.283	$1.289
Per Mile Operated	$0.210	$0.211
Tier three (contingent $3.85/gallon)		
a. Class 02 (small utilities)		
Per Hour Assigned	$1.265	$1.271
Per Mile Operated	$0.201	$0.202
b. Class 03 (hybrid SUV)		
Per Hour Assigned	$1.685	$1.689
Per Mile Operated	$0.132	$0.132
c. Class 04 (large utilities)		
Per Hour Assigned	$1.990	$1.998
Per Mile Operated	$0.268	$0.269
d. Class 05 (hybrid sedans)		
Per Hour Assigned	$1.477	$1.483
Per Mile Operated	$0.094	$0.094
e. Class 06 (midsize compacts)		
Per Hour Assigned	$1.278	$1.285
Per Mile Operated	$0.172	$0.173
f. Class 07 (small pickups)		
Per Hour Assigned	$1.343	$1.348
Per Mile Operated	$0.257	$0.258
g. Class 11 (large pickups)		
Per Hour Assigned	$1.352	$1.358
Per Mile Operated	$0.285	$0.286
h. Class 12 (vans - all types)		
Per Hour Assigned	$1.283	$1.289
Per Mile Operated	$0.237	$0.238
2. Equipment Program		
All of Program Operations	60-day working capital reserve	

	Fiscal 2012	Fiscal 2013
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION — 5706		
1. Air Operations Program		
a. Bell UH-1H	$1,075	$1,075
b. Bell Jet Ranger	$475	$475
c. Cessna 180 Series	$150	$150
DEPARTMENT OF JUSTICE - 4110		
1. Agency Legal Services		
a. Attorney (per hour)	$93.00	$93.00
b. Investigator (per hour)	$53.00	$53.00
DEPARTMENT OF CORRECTIONS — 6401		
1. Labor Charge for Motor Vehicle Maintenance (per hour)	$26.50	$26.50
2. Supply Fee as a Percentage of Actual Costs of Parts	5%	5%
3. Parts	Actual Cost	Actual Cost
4. Cook/Chill Rate		
a. Base Tray Price — Hot/Cold (no delivery)	$1.73	$1.73
b. Base Tray Price — Hot	$0.87	$0.87
c. Detention Center Trays	$2.45	$2.45
d. Accessory Package	$0.10	$0.10
5. Delivery Charge Per Mile	$0.50	$0.50
6. Delivery Charge Per Hour	$35.00	$35.00
7. Bulk Food	Cost	Cost
8. Spoilage Percentage All Customers	5%	5%
9. Overhead Charge		
a. Montana State Hospital	11%	11%
b. Montana State Prison	77%	77%
c. Treasure State Correctional Training Center	12%	12%
10. License Plates - Cost per set	$6.20	$6.20
OFFICE OF PUBLIC INSTRUCTION — 3501		
1. OPI Indirect Cost Pool		
a. Unrestricted Rate	17.5%	17.5%
b. Restricted Rate	17%	17%

Approved May 12, 2011

CHAPTER NO. 364

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2011; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2012 AND 2013; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program			
Judiciary			
Supreme Court Operations			
State court improvement training program	FY 2011	$101,517	Federal
State court improvement data program	FY 2011	$102,394	Federal

All remaining fiscal year 2011 federal budget amendment authority for the state court improvement training program and the state court improvement data program is authorized to continue into federal fiscal year 2013.

District Court Operations

All remaining fiscal year 2011 federal budget amendment authority for the Montana case management and offender tracking program is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the 13th Judicial District adult drug court is authorized to continue into federal fiscal year 2013.

Secretary of State			
Business and Government Services			
2011 help America vote grant	FY 2011	$48,126	Federal
Help America vote grant part II	FY 2011	$350,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for the help America vote mock election program grant is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the 2011 help America vote grant, the help America vote grant, the help America vote part II grant, and election assistance for individuals with disabilities grant is authorized to continue into federal fiscal year 2013.

Election assistance for individuals with disabilities	FY 2011	$100,000	Federal
State Auditor's Office			
Insurance			
Consumer assistance program grant	FY 2011	$149,880	Federal

All remaining fiscal year 2011 federal budget amendment authority for the consumer assistance program grant is authorized to continue into state fiscal year 2012.

Office of Public Instruction

OPI Administration

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Title II-D

education technology and the Title I-A grants is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for Title I-A improvements is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the school improvement grants program is authorized to continue into federal fiscal year 2013.

Distribution to Public Schools

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for education technology, Title I grants, IDEA part B (section 619 preschool), IDEA — special education, and the McKinney-Vento (homeless assistance) is authorized to continue into state fiscal year 2012.

Department of Justice

Crime Control Division

Justice System Support Service

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the violence against women formula grant program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Harold Rogers prescription drug monitoring program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the crime victims assistance grant program is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Montana sexual assault services program formula grant is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Byrne/JAG grant is authorized to continue into state fiscal year 2013.

Department of Justice

Legal Services Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the crime victims compensation grant program is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the information networks training enforcement response collaborative efforts develop effectiveness is authorized to continue into federal fiscal year 2012.

Highway Patrol Division

2011 high intensity drug trafficking areas grant	FY 2011	$6,189	Federal

All remaining fiscal year 2011 federal budget amendment authority for the 2010 high intensity drug trafficking areas grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the 2011 high intensity drug trafficking areas grant is authorized to continue into state fiscal year 2013.

Division of Criminal Investigations

Missouri River drug task force overtime funding	FY 2011	$5,336	Federal

All remaining fiscal year 2011 federal budget amendment authority for the Missouri River drug task force overtime funding is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the internet crimes against children grant is authorized to continue into state fiscal year 2013.

Forensic Science Division

Forensic DNA backlog reduction program	FY 2011	$150,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for the forensic DNA backlog reduction program is authorized to continue into state fiscal year 2013.

Public Service Regulation

Public Service Regulation Program

All remaining fiscal year 2011 federal budget amendment authority for the state electricity regulators assistance is authorized to continue into state fiscal year 2013.

Montana Arts Council

Promotion of the Arts Division

Poetry out loud competitions	FY 2011	$5,700	Federal

All remaining fiscal year 2011 federal budget amendment authority for the state arts plan, arts education, and arts in underserved communities is authorized to continue into state fiscal year 2012.

Montana Library Commission

Statewide Library Resources

Multistate demonstration project for preservation of state government digital information	FY 2011	$94,899	Federal
Library Services and Technology Act grant	FY 2011	$135,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for the multistate demonstration project for preservation of state government digital information, the Library Services and Technology Act grant, the librarians for the 21st century grant, and the national leadership grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for enhancing computing centers at Montana public libraries is authorized to continue into state fiscal year 2013.

Montana Historical Society

Research Center

Montana labor leaders oral history project	FY 2011	$6,500	Federal

All remaining fiscal year 2011 federal budget amendment authority for the Montana labor leaders oral history project, the state and national partnership grant, and the growing baby beef in Montana and ceremonial dances of the Pueblo Indians Preservation Projects is authorized to continue into state fiscal year 2012.

Publications

Montana's last best barns	FY 2011	$4,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for Montana's last best barns and the cultural history of Montana weddings grant is authorized to continue into state fiscal year 2012.

Education Program

No ordinary time: war, resistance, and the Montana experience	FY 2011	$1,500	Federal
Teaching with a primary impact grant	FY 2011	$15,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for no ordinary time: war, resistance, and the Montana experience, the teaching with a primary impact grant, and the richest hills: mining in the far west, 1865-1920 is authorized to continue into state fiscal year 2012.

Historic Preservation Program

Cultural resource annotated bibliography system and the cultural resources information system	FY 2011	$5,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for the cultural resources annotated bibliography system and the cultural resources information system is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the preserve America grant program and the bureau of land management data sharing grant is authorized to continue into federal fiscal year 2013.

Department of Fish, Wildlife, and Parks

Fisheries Division

All remaining fiscal year 2011 federal budget amendment authority for the structural analysis on the Chadbourne diversion, the republican canal siphon supplemental grant, the hedge canal siphon supplemental grant, the fish conservation geneticist, the Elkhorn Mountain westslope cutthroat trout recovery program, the Federal Fisheries Restoration and Irrigation Mitigation Act of 2000 inventory, and the Highwood westslope cutthroat trout restoration is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the westslope cutthroat trout restoration in the Helena national forest is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority to restore a fish passage at a railroad culvert on Rock Creek is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the Madison River angler and boat survey, the challenge cost share agreement with the United States forest service, the implementation of the Montana aquatic nuisance species management plan, the westslope cutthroat trout conservation strategy for the Lewis and Clark national forest, the Goose Creek Yellowstone cutthroat trout restoration, the westslope cutthroat trout and Yellowstone cutthroat trout sampling in the Gallatin national forest, the Fort Peck biological

opinion study, the Montana westslope cutthroat trout restoration, and the barriers for Cabin Creek and Leverich Creek is authorized to continue into federal fiscal year 2013.

Law Enforcement Division

All remaining fiscal year 2011 federal budget amendment authority for the forest service turn in poachers Montana program and the bureau of land management turn in poachers Montana public service program is authorized to continue into state fiscal year 2012.

Wildlife Division

All remaining fiscal year 2011 federal budget amendment authority for the grassland bird conservation on working landscapes: spacial analysis linking populations to habitat, to trap, collar, and monitor grizzly bears and their activities on and adjacent to the northern continental divide ecosystem, and for bear conflict management in the Cabinet-Yaak region is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for surveillance for highly pathogenic avian influenza in migratory birds is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the 2008 legacy administration grant, evaluating sage grouse and habitat responses to sage grouse-friendly livestock grazing strategies, the North American waterfowl management plan, the bureau of land management pronghorn study, the wolf management plan, the forest legacy administration, and grizzly bear management assistance in Northwest Montana is authorized to continue into federal fiscal year 2013.

Parks Division

Middle and North Fork Flathead River weed project	FY 2011	$13,650	Federal

All remaining fiscal year 2011 federal budget amendment authority for the Middle and North Fork Flathead River weed project, the Blackfoot River recreation management partnership, and the management of commercial, competitive, and organized group activities of the public land and related water resources within the Madison River corridor is authorized to continue into state fiscal year 2012.

Capital Outlay

Pilster wetland restoration and enhancement	FY 2011	$75,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for Narrows Creek native fish spawning, the Skelly Gulch fish barrier, the Montana outdoor discovery center development, and the Elkhorn Creek fish barrier is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority to develop and implement fish screen designs is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Pilster wetland restoration and enhancement and the Cherry Creek westslope cutthroat restoration is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the forest service legacy Murray Douglas conservation easement grant, the restoration and conservation work on portions of the Big Hole River watershed,

and restoring genetically pure Yellowstone cutthroat trout to Four Mile Creek is authorized to continue into federal fiscal year 2013.

Management and Finance Division

All remaining fiscal year 2011 federal budget amendment authority for the Blackfoot River easement project is authorized to continue into state fiscal year 2013.

Fish and Wildlife Administration

All remaining fiscal year 2011 federal budget amendment authority for the crucial areas and connectivity assessment and training and the Idaho-Montana divide transboundary decision support system is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the data integration and collaborative services for crucial areas assessments and the Montana pass-through component of the state wildlife grant for tracking and reporting actions for conservation of species is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the comprehensive conservation plan for Montana is authorized to continue into federal fiscal year 2013.

Department of Environmental Quality

Central Management Program

All remaining fiscal year 2011 federal budget amendment authority for the federal fiscal year 2010 exchange network is authorized to continue into federal fiscal year 2012.

Planning, Prevention, and Assistance Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the state energy programs is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Lake Como fly ash boat ramp and state energy efficient appliance rebate program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the state of Montana energy efficiency and conservation block grant is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the state of Montana energy efficiency and conservation block grant, energy assurance planning, and the national wetlands condition assessment is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Montana clean water grant and the Montana drinking water grant is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the 106 supplemental monitoring initiative is authorized to continue into federal fiscal year 2013.

Remediation Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for leaking underground storage tanks is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for abandoned mine lands reclamation throughout Montana is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the superfund state site, the great divide sand tailings abandoned mine lands reclamation project, and the great divide sand tailings removal is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the abandoned mine lands reclamation grant and the abandoned mine lands consolidated grant is authorized to continue into federal fiscal year 2013.

Permitting and Compliance Division

All remaining fiscal year 2011 federal budget amendment authority for the Zortman/Landusky mine wind turbine and infrastructure installation is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Montana drinking water grant is authorized to continue into federal fiscal year 2013.

Department of Transportation

General Operations Program

All remaining fiscal year 2011 federal budget amendment authority for the federal highway administration on-the-job training supportive services program for the Salish Kootenai college and the federal highway administration on-the-job training supportive services program for the Fort Peck community college is authorized to continue into federal fiscal year 2013.

Construction Program

All remaining fiscal year 2011 federal budget amendment authority for the federal fiscal year 2009 federal-aid highway program obligation is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for highway funding is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the Montana height modernization program and the federal fiscal year 2010 federal-aid highway program obligation is authorized to continue into federal fiscal year 2013.

Rail, Transit, and Planning Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the transit funding formula is authorized to continue into federal fiscal year 2012.

Department of Livestock

Centralized Services Program

All remaining fiscal year 2011 federal budget amendment authority to compensate livestock owners for losses of livestock due to wolf predation is authorized to continue into federal fiscal year 2013.

Department of Natural Resources and Conservation

Conservation and Resource Development Division

All remaining fiscal year 2011 federal budget amendment authority for the safe drinking water state revolving fund and the clean water state revolving fund is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the Montana clean water state revolving fund and the Montana drinking water state revolving fund is authorized to continue into federal fiscal year 2013.

Water Resources Division

All remaining fiscal year 2011 federal budget amendment authority for the digital flood insurance rate map for Yellowstone County and the digital flood insurance rate map for Missoula County is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the digital flood insurance rate map for Sanders County and the digital flood insurance rate map for Lake County is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Flint Creek ditch diversion replacement and fish screen project, the digital flood insurance rate map for Broadwater County, the digital flood insurance rate map for Sweet Grass County, and the digital flood insurance rate map for Stillwater County is authorized to continue into federal fiscal year 2013.

Forestry and Trust Lands Division

Providing technical assistance in forest-based conservation and enhancement to landowners, residents, and organizations within the state of Montana	FY 2011	$75,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for providing technical assistance in forest-based conservation and enhancement to landowners, residents, and organizations within the state of Montana, the Montana cooperative fire protection agreement, the prescribed burning program on the Helena national forest, the additional staffing at Kootenai interagency dispatch center for prescribed fire purposes, and participation in prescribed burning activities with the bureau of land management is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for USFS state and private forestry assistance is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the hazardous fuels grant, the forest restoration grant, the forest stewardship program, urban and community forestry and forest health management, state fire assistance and volunteer fire assistance and conservation education, hazardous fuel reduction work on adjacent nonfederal lands, hazardous fuel reduction and restoration forestry projects, and forest health restoration activities is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the aerial fire depot, to provide additional staffing for fire control purposes, and to enhance biomass utilization is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the forest health management western bark beetle/white pine blister rust program, the conservation reserve program, the consolidated payments grant, hazardous fuel reductions, the forested trust lands habitat conservation plan, and the citizen awareness and monitoring program of invasive insects and diseases is authorized to continue into federal fiscal year 2013.

Department of Administration

Information Technology Services Division

All remaining fiscal year 2011 federal budget amendment authority for the community oriented policing services technology grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for ensuring needed help arrives near callers employing 911 is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for integration and enhancement of a statewide digital cadastral database is authorized to continue into federal fiscal year 2013.

Department of Agriculture

Agricultural Development Division

Federal fiscal year 2011 specialty crop block grant program farm bill activities	FY 2011	$292,954.47	Federal

All remaining fiscal year 2011 federal budget amendment authority for the Montana locally grown portion of the specialty crop block grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for developing Montana's direct farm market and supply chains is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the federal fiscal year 2011 specialty crop block grant program farm bill activities and the federal fiscal year 2010 specialty crop block grant program farm bill activities is authorized to continue into state fiscal year 2013.

Department of Corrections

Adult Community Corrections

All remaining fiscal year 2011 federal budget amendment authority for interventions for high-risk offenders in rural Montana is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority to provide statewide training on sex offender assessment, treatment, reentry, supervision, and monitoring as identified by the center for sex offender management's assessment of Montana is authorized to continue into federal fiscal year 2012.

Secure Custody Facilities

State criminal alien assistance program	FY 2011	$26,092	Federal

Department of Commerce

Business Resources Division

Small Business Jobs Act program	FY 2011	$325,000	Federal

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the community development block grant is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Small Business Jobs Act program is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the state broadband data and development grant is authorized to continue into federal fiscal year 2013.

Energy Promotion and Development Division

All remaining fiscal year 2011 federal budget amendment authority for empowering Montana to accelerate wind energy development is authorized to continue into state fiscal year 2012.

Community Development Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the community development block grant is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the neighborhood stabilization program is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the neighborhood stabilization program part III is authorized to continue into federal fiscal year 2013.

Housing Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the tax credit assistance program and the housing credit exchange is authorized to continue into state fiscal year 2012.

Department of Labor and Industry

Workforce Services Division

All remaining fiscal year 2011 federal budget amendment authority for the western Montana timber and wood dislocated workers grant, the national emergency grant for dislocated workers program, and the energy training partnership grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for trade adjustment assistance is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the reemployment and eligibility assessment initiative grant is authorized to continue into state fiscal year 2013.

Unemployment Insurance Division

FY 2011 emergency unemployment compensation	FY 2011	$429,353	Federal
FY 2010 emergency unemployment compensation	FY 2011	$419,397	Federal

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the extend emergency unemployment compensation program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the additional emergency unemployment compensation administration grant and the additional unemployment insurance state administration grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the reemployment and eligibility assessment initiative grant, the FY 2010

emergency unemployment compensation grant, and the unemployment insurance state administration grant is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the FY 2011 emergency unemployment compensation grant is authorized to continue into federal fiscal year 2013.

Office of Community Services

AmeriCorps planning grant program	FY 2011	$27,445	Federal

All remaining fiscal year 2011 federal budget amendment authority for the AmeriCorps planning grant program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for carrying out a national service program is authorized to continue into state fiscal year 2013.

Department of Military Affairs

Disaster and Emergency Services

Emergency operations center	FY 2011	$1,700,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for the federal emergency management agency program is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the hazard mitigation grant program and the emergency operation center is authorized to continue into state fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the predisaster mitigation competitive grants is authorized to continue into federal fiscal year 2013.

Department of Public Health and Human Services

Management and Disability Services

Sustaining the work of the medicaid infrastructure grant	FY 2011	$750,000	Federal

All remaining fiscal year 2011 federal budget amendment authority for sustaining the work of the medicaid infrastructure grant is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the vocational rehabilitation grants to states is authorized to continue into state fiscal year 2012.

Human and Community Services Division

Low-income home energy assistance program	FY 2011	$16,311,720	Federal
Supplemental nutrition assistance program	FY 2011	$8,843,143	Federal
Support for pregnant and parenting teens	FY 2011	$1,000,000	Federal

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for weatherization — FY 2009 and weatherization — FY 2010-11 is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for support for pregnant and parenting teens is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the low-income home energy assistance program, the weatherization assistance program, the child care and development fund, and the weatherization training center is authorized to continue into federal fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for SNAP — Food Stamps FY 2009 and SNAP — Food Stamps FY 2010-11 is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for homeless prevention/emergency food and shelter — FY 2009 and homeless prevention/emergency food and shelter — FY 2010-11 is authorized to continue into federal fiscal year 2013.

All remaining fiscal year 2011 federal budget amendment authority for the supplemental nutrition assistance program, the early learning state advisory council, the child care wellness program grant, and the food stamp performance bonus is authorized to continue into federal fiscal year 2013.

Public Health and Safety Division

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for WIC — FY 2010-11 is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget authority authorized by the 61st legislature in section 85, Chapter 489, Laws of 2009, for the prevention and wellness fund — FY 2010-11 is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the prevention and wellness fund — FY 2010-11 is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the public health emergency response (H1N1) grant, the public health emergency response (H1N1) phase IV grant, the affordable care act, the maternal, infant, and early childhood home visiting program, the personal responsibility education program and enhancing interoperability of electronic health records is authorized to continue into federal fiscal year 2012.

Disability Services Division

All remaining fiscal year 2011 federal budget amendment authority for the Montana community-based alternatives to psychiatric residential treatment facilities demonstration grant is authorized to continue into state fiscal year 2012.

Senior and Long-Term Care Division

Preventative health grant for state and community programs on aging	FY 2011	$26,220	Federal
Federal congregate and home-delivered meals grant for state and community programs on aging	FY 2011	$812,888	Federal
Ombudsman allotments for vulnerable elder rights protection activities	FY 2011	$20,774	Federal
Nutrition services incentive program	FY 2011	$194,293	Federal

All remaining fiscal year 2011 federal budget amendment authority for the preventative health grant for state and community programs on aging, the federal congregate and home-delivered meals grant for state and community programs on aging, the ombudsman allotments for vulnerable elder rights protection activities, the nutrition services incentive program, the Medicare Improvements for Patients and Providers Act for priority area 2, for the Medicare Improvements for Patients and Providers Act for priority area 3, and from the national council on aging is authorized to continue into state fiscal year 2012.

All remaining fiscal year 2011 federal budget amendment authority for the Medicare Improvements for Patients and Providers Act is authorized to continue into federal fiscal year 2012.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 12, 2011

CHAPTER NO. 365

[HB 6]

AN ACT IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from natural resources projects state special revenue account. (1) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation up to:

(a) $100,000 to be used for emergency projects to be awarded over the course of the biennium;

(b) $800,000 to be used for planning grants to be awarded by the department over the course of the biennium;

(c) $300,000 to be used for irrigation development grants to be awarded by the department over the course of the biennium;

(d) $50,000 to be used for water project private grants to be awarded by the department over the course of the biennium; and

(e) $180,000 to be used for development of the state water plan and inventory to be awarded by the department over the course of the biennium.

(2) There is appropriated from the natural resources projects state special revenue account established in 15-38-302 to the department of natural resources and conservation $6,260,000 that is available in the natural resources projects state special revenue account for grants to political subdivisions and local governments during the 2013 biennium. The funds in this section must be awarded by the department to the named entities for the described purposes and in the grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 3] and the contingencies described in the renewable resource grant and loan program January 2011 report to the 62nd legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3). Funds must be awarded up to the amounts approved in this section in the

following order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list or planning grants that would not otherwise receive funding. If at any time a grant sponsor determines a project will not begin before June 30, 2013, the sponsor shall notify the department of natural resources and conservation. After receiving notification, the department may revert the grant amount to the natural resources projects state special revenue account to make it immediately available for other projects. After all eligible projects are funded, remaining project funds may be used for any renewable resource program projects authorized under this section or for reclamation and development program projects authorized by the 62nd legislature in House Bill No. 7. With the exception of planning grants, projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 3].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Grant Amount
Department of Natural Resources and Conservation — Water Resources Division (Hydropower Feasibility Study)	$100,000
Sheridan, Town of (Wastewater System Improvements)	$100,000
Deer Lodge, City of (Wastewater System Improvements)	$100,000
Fergus Conservation District (Big Spring Creek Stream Restoration at the Machler Conservation Easement)	$100,000
Department of Natural Resources and Conservation — Trust Land Management Division (Smith Lake Dam Rehabilitation)	$100,000
Culbertson, Town of (Wastewater System Improvements)	$100,000
Upper and Lower River Road Water and Sewer District (Water Distribution and Wastewater Collection, Phase 4)	$100,000
Beaverhead Conservation District (Poindexter Slough Fishery Enhancement)	$100,000
Pondera Conservation District (C Canal Rehabilitation)	$100,000
Buffalo Rapids Project - District 1 (System Improvements - Lateral 26.4)	$100,000
Pondera Conservation District (Wasteway Rehabilitation and Water Quality Improvement)	$100,000
Flathead County (Bigfork Storm Water System Improvements)	$100,000
Hebgen Lake Estates Water and Sewer District (Wastewater System Improvements)	$100,000
Harlem, City of (Wastewater System Improvements)	$100,000

Polson, City of (Water System Improvements)	$100,000
Amsterdam-Churchill Sewer District No. 307 (Wastewater System Improvements)	$100,000
Stanford, Town of (Water System Improvements)	$100,000
Helena Valley Irrigation District (Pump No. 2 Rehabilitation)	$100,000
Belt, Town of (Water System Improvements)	$100,000
Sun Prairie Village County Water and Sewer District (Water System Improvements)	$100,000
Fort Belknap Indian Community (Fort Belknap Indian Community Water Conservation)	$100,000
Sweet Grass County Conservation District (Big Timber Creek Channel Stabilization)	$99,998
Sidney Water Users Irrigation Districts 1 and 2 (Increasing Irrigation Efficiency: Districts 1 and 2, Phase 3)	$100,000
Sidney Water Users Irrigation District (Increasing Irrigation Efficiency: District 5, Lateral 2)	$100,000
Clinton Irrigation District (Schoolhouse Lateral Pipeline Conversion)	$100,000
East Bench Irrigation District (Main Canal Check Structure Rehabilitation)	$100,000
Lower Musselshell Conservation District (Lower Musselshell Delphia Melstone Irrigation Structure Rehabilitation Lining)	$100,000
Madison Conservation District (South Meadow Creek Water Efficiency)	$100,000
Confederated Salish and Kootenai Tribes (Jocko Upper S Canal Lining)	$100,000
Malta Irrigation District (Dodson North Canal Siphons Replacement)	$100,000
Roberts Carbon County Water and Sewer District (Roberts Wastewater System Improvements)	$100,000
Chippewa Cree Tribe of the Rocky Boy's Reservation (Dry Fork Farms Irrigation Enhancement)	$97,429
Flathead Joint Board of Control (Jocko Upper J Canal Diversion Structure)	$100,000
Lockwood Irrigation District (Intake Canal Spillway Replacement)	$100,000
Glendive, City of (Glendive Floodplain Feasibility Study)	$100,000
Fort Shaw Irrigation District (Water Quality and Quantity Improvements)	$100,000
Daly Ditches Irrigation District (Hedge Canal Improvement)	$100,000
Gallatin Gateway County Water and Sewer District (Wastewater System Improvements)	$100,000

Greenfields Irrigation District (Big Coulee Wastewater and Water Quality)	$100,000
Park Conservation District (Park-Branch Paradise Canal Water Efficiency)	$100,000
Huntley Project Irrigation District (Lower Canal Seepage Lining)	$100,000
Anaconda-Deer Lodge County (Systemwide Water Meter Installation)	$100,000
Fairfield, Town of (Water System Improvements)	$100,000
Fort Peck Tribes (Lateral L-2M Rehabilitation)	$100,000
Hardin, City of (Water System Improvements)	$100,000
Bitter Root Irrigation District (Siphon 1 Improvement, Phase 2)	$100,000
North Havre County Water District (Water System Improvements)	$100,000
Roundup, City of (Musselshell Watershed Sustainable Irrigation Management Program)	$60,000
Department of Natural Resources and Conservation — Water Resources Division (Clark Fork River Basin Task Force)	$63,000
Green Mountain Conservation District (Tuscor Creek Restoration)	$84,778
Lewistown, City of (East Fork Dam Repair)	$100,000
Crow Tribe (Crow Agency Water System Improvements, Phase 4A)	$100,000
Hill County Water District (Water System Improvements)	$100,000
Roundup, City of (Water System Improvements)	$100,000
Kevin, Town of (Water System Improvements, Phase 3)	$100,000
LaCasa Grande Water and Sewer District (Wastewater System Improvements)	$100,000
Whitefish, City of (Haskill Basin Water Conservation and Preservation)	$100,000
Ravalli County (LiDAR Mapping for Flood Hazard Identification, Phase 3)	$75,000
Lockwood Water and Sewer District (Wastewater System Improvements)	$100,000
Montana Department of Fish, Wildlife, and Parks (Chadbourne Diversion Dam Repair and Selective Fish Passage Retrofits)	$99,500

Department of Natural Resources and Conservation — Water Resource Division (East Fork Rock Creek Diversion and Fish Screen)	$100,000
Teton Conservation District (Eureka Reservoir Improvements)	$100,000
East Helena, City of (Wastewater System Improvements)	$100,000
Missoula County (Spring Meadows Sewer)	$100,000
Missoula County (Missoula County LiDAR Mapping)	$50,000
Department of Natural Resources and Conservation — Water Resources Division (Martinsdale Supply Canal Headworks Rehabilitation)	$98,688
Ravalli County Environmental Health (Bitterroot Valley Septic Systems Impact Evaluation Model, Phase 2)	$73,745
Foy's Lakeside County Water and Sewer District (Water System Improvements)	$100,000
Pablo/Lake County Water and Sewer District (Water System Improvements)	$100,000
Cut Bank, City of (Water System Improvements, Phase 4)	$100,000
University of Montana Natural Heritage Program (Wetland and Riparian Mapping for the Lower and Middle Musselshell Watersheds)	$99,934
Bozeman High School, Montana School District No. 7 (Mandeville Creek Restoration and Community Education)	$100,000
White Sulphur Springs, City of (Water System Improvements)	$100,000
Department of Natural Resources and Conservation — Water Resources Division (Cooney and Deadman's Basin Automated Instrumentation)	$100,000
Park Conservation District (Livingston Ditch Water Efficiency and Infrastructure Protection)	$100,000
Carbon Conservation District (Whitehorse Canal Company — River Bank Stabilization)	$82,950
Ronan, City of (Storm water System Improvements)	$100,000
Fromberg, Town of (Water System Improvements)	$100,000
Jordan, Town of (Water System Improvements)	$100,000
Lower Yellowstone Irrigation Project Board of Control (Lower Yellowstone On-Farm Water Conservation Measures)	$100,000
Butte-Silver Bow Consolidated City-County Government (Big Hole River Pump station Rehabilitation)	$100,000

Manhattan, Town of (Water System Improvements)	$100,000
North Powell Conservation District (Blackfoot Irrigation Efficiency)	$60,000
Kalispell, City of (Woodland Park Pond Remediation)	$100,000
Department of Natural Resources and Conservation — Water Resources Division (StreamStats Interactive Web Map Application)	$100,000
Libby, City of (Wastewater Collection System and Treatment Facility Upgrades)	$100,000
Toston Irrigation District (Crow Creek Pumping Plant Rehabilitation)	$100,000
Em-Kayan Water and Sewer District (Water System Improvements)	$100,000
Gallatin County Solid Waste District (Logan Landfill Waste-to-Energy Feasibility Study)	$100,000
Hill County Conservation District (Milk River Basin Riparian and Hydrology Restoration)	$54,245
Brady County Water and Sewer District (Water System Improvements)	$100,000
Lincoln Conservation District (Sinclair Creek Watershed Improvement)	$100,000
Tin Cup Water and Sewer District (Tin Cup Lake Dam Improvements)	$94,638
Melrose Water and Sewer District (Wastewater System Improvements)	$100,000
Augusta Water and Sewer District (Wastewater System Improvements)	$100,000
Target Range Water and Sewer District (Replacing Obsolete Septic Systems)	$100,000
Carbon Conservation District (Pleasant Valley Canal Rehabilitation)	$100,000
Troy, City of (Water System Improvements, Phase 3)	$100,000
Department of Natural Resources and Conservation — Water Resources Division (Water Resource Survey Framework)	$71,000
University of Montana (Developing Wolf Population Monitoring Techniques to Advance Management and Conservation of Wildlife in Montana)	$100,000
Lockwood Area/Yellowstone County Water and Sewer District (Water Treatment Plant Clearwell Addition)	$100,000
Eureka, Town of (Wastewater System Upgrade and Expansion)	$100,000
Joliet, Town of (Water System Improvements)	$100,000

University of Montana (An Experimental Assessment of the Ecological and Social Dimensions of Human-Bear Conflict)	$99,067
Bigfork County Water and Sewer District (Water Supply and Transmission Main Improvements)	$100,000
Park County (Shields River Surface and Groundwater Analysis, Planning and Long-Range Policy Formulation)	$81,192
Petroleum County Conservation District (Horse Creek Coulee Water Storage)	$82,286
Shelby, City of (West Interceptor Water System)	$100,000
Sidney, City of (Optimizing Water Development from the City of Sidney Well Field)	$100,000
Thompson Falls, City of (Transmission Main Replacement)	$100,000

(4) Grant projects listed in subsection (3) are eligible for a loan up to the amounts recommended in subsection (3) in lieu of a grant. The authorization for the loan is contained in House Bill No. 8.

(5) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2013 biennium pursuant to 17-7-302.

Section 2. Conditions of grants. Disbursement of funds under [sections 1 through 3] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 62nd legislature may result in the proportional reduction in grant amount.

(2) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 62nd legislature for the 2013 biennium or, in the case of emergency, irrigation development, and private grant and planning grant applications, of conditions specified at the time of written notification of approved grant authority;

(3) execution of a grant agreement with the department; and

(4) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Appropriations established. For any entity of state government that receives a grant under [sections 1 and 2], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to entities from prior biennia are reauthorized for completion of contract work.

Section 4. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will

review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 366

[HB 8]

AN ACT REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 61ST LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS ON LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the following renewable resource projects that were approved by the 61st legislature in Chapter 372, Laws of 2009, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2011. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed in subsections (2) and (3) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 15 years.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION - WATER RESOURCES DIVISION	
Ruby Dam Rehabilitation Project	$2,000,000

(3) The interest rate for the project in this group is 3.0% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION - CONSERVATION AND RESOURCE DEVELOPMENT DIVISION	
Refinance Existing Debt or Rehabilitation of Water and Sewer Facilities	$2,859,000

(4) The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

Loan	Amount
SUNSET IRRIGATION DISTRICT	
Gravity Flow Irrigation Pipelines	$1,465,266

Section 2. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 6]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed $13,724,457, of which $6,324,266 is to be used to finance the projects approved in [section 1], $5,610,044 is to be used to finance additional loans in lieu of grants listed in House Bill No. 6, and up to $1,790,147 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [section 1] and this section and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the natural resources projects state special revenue account established in 15-38-302.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 3. Conditions of loans. (1) Disbursement of funds under [sections 1 and 2] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 4. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 5. Appropriations established. For any entity that receives a loan under [sections 1 and 2], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 6. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 2] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 2].

(2) The legislature, through the enactment of [sections 1 through 6] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 2] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 6] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 367

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2]

and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 2].

(2) The Montana arts council shall disburse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from the cultural and aesthetic projects trust fund account to the Montana historical society $30,000 for the biennium ending July 1, 2013, for care and conservation of capitol complex artwork.

Section 2. Appropriation of cultural and aesthetic grant funds. The following projects are approved, and $666,299 is appropriated to the Montana arts council for the biennium ending June 30, 2013, from the cultural and aesthetic projects trust fund account:

Grant #	Grantee	Grant Amount
A. Special Project $4,500 or less		
1607	Signatures From Big Sky	$ 4,500
1604	Miles City Speakers Bureau	$ 4,000
1609	Upper Swan Valley Historical Society	$ 4,400
1603	Mai Wah Society	$ 3,000
1606	Montana Storytelling Roundup	$ 3,000
1608	String Orchestra of the Rockies	$ 3,000
1610	Yellowstone Ballet Company	$ 3,000
1600	Clay Arts Guild	$ 2,500
1605	Mission Valley Friends of the Arts	$ 2,000
B. Special Projects		
1621	Humanities Montana	$14,220
1632	CoMotion Dance Project	$9,480
1617	Emerson Center for the Arts & Culture	$6,636
1630	Musikanten Montana	$7,593
1622	KUFM-TV	$7,110
1634	Whitefish Theatre Company	$8,532
1611	Bitter Root Cultural Heritage Trust	$4,740
1626	Montana Historical Society	$7,110
1614	Broadwater Productions, Inc.	$9,480
1620	Hockaday Museum of Art	$8,532
1631	Queen City Ballet	$4,740
1624	Missouri Valley Development Corporation	$4,740
1635	Zootown Arts Community Center	$4,740
1623	Missoula Art Museum	$7,110
1613	Bozeman Symphony Society	$7,584
1633	Tobacco Valley Improvement Association Board of Arts	$ 2,500
1619	Hamilton Players, Inc.	$ 4,400
1612	Bitter Root Valley Historical Society/ Ravalli County Museum	$ 3,000
1615	Butte-Silver Bow Public Archives	$4,740
1629	Museum of the Rockies	$4,740

1627	Montana Museum of Art & Culture	$4,740
1618	Fraternal Order of Eagles	$ 4,000
C. Operational Support		
1668	Museums Association of Montana	$10,000
1665	Montana Preservation Alliance	$15,000
1662	Montana Arts	$12,500
1657	Museum & Art Gallery Directors' Association	$12,000
1628	Montana Performing Arts Consortium	$12,500
1663	Montana Association of Symphony Orchestras	$12,500
1664	Montana Dance Arts Association	$12,000
1689	YMCA Writer's Voice	$14,220
1685	VSA Montana	$9,586
1649	District 7 Human Resources Development Council	$14,220
1666	Montana Shakespeare in the Parks	$14,220
1638	Archie Bray Foundation	$11,850
1647	Carbon County Historical Society	$15,168
1654	Helena Symphony Society, Inc.	$14,220
1648	Custer County Art & Heritage Center	$12,324
1679	Stillwater Historical Society	$11,376
1640	Beaverhead County Museum	$15,168
1651	Glacier Symphony and Chorale	$12,324
1673	Pondera History Association	$11,376
1677	Schoolhouse History & Art Center	$14,220
1655	Holter Museum of Art	$11,850
1686	Western Heritage Center	$11,376
1652	Great Falls Symphony	$11,376
1644	Butte Citizens for Preservation and Revitalization	$11,376
1642	Billings Symphony Society	$11,376
1641	Big Horn Arts and Craft Association	$11,376
1636	Alberta Bair Theater	$9,480
1639	Art Mobile of Montana	$11,376
1680	Sunburst Foundation	$ 7,584
1661	Montana Artists Refuge	$ 4,740
1643	Butte Center for the Performing Arts	$ 7,584
1671	Paris Gibson Square Museum of Art	$ 9,480
1656	Intermountain Opera Association	$ 7,584
1658	MCT, Inc.	$ 7,110
1674	Rimrock Opera	$ 7,110
1683	Montana Repertory Theatre	$ 4,740
1645	Butte Symphony Association	$ 7,110
1676	Rocky Mountain Ballet Theatre	$ 7,584
1669	North Valley Music School	$ 7,584
1650	Gallatin Historical Society	$ 5,688
1678	Southwest Montana Arts Council	$ 7,584

1687	World Museum of Mining	$ 4,740
1688	Yellowstone Art Museum	$ 7,584
1653	Helena Presents/Myrna Loy Center	$ 7,584
1637	Alpine Artisans	$ 4,000
1670	Northwest Montana Historical Society	$ 4,740
1660	Missoula Cultural Council	$ 3,680
1682	Equinox Theatre Company	$ 2,000
1667	Friends of the Museum of the Plains Indian Artist	$ 2,000
1672	Pondera Arts Council	$ 2,000
D. Capital Expenditure		
1691	Fort Peck Fine Arts Council, Inc.	$15,524
1692	Laurel Revitalization League Inc.	$ 4,740

Section 3. Contingent appropriation of additional grant money. If either or both of the appropriations in House Bill No. 2 to the Montana arts council for Promotion of the Arts of $204,342 state special revenue for fiscal year 2012 and $201,903 state special revenue for fiscal year 2013 are reduced, then the appropriation in [section 2] is increased by the amount of the reduction, not to exceed a total increase of $28,677. This appropriation increase must increase the grant amount for projects with grant approvals greater than $4,500 on a pro rata basis, with the exception of service organization grants. Service organization grants for Museums Association of Montana, Montana Preservation Alliance, Montana Arts, Museum & Art Gallery Directors' Association, Montana Performing Arts Consortium, Montana Association of Symphony Orchestras, and Montana Dance Arts Association are not increased by the additional appropriation.

Section 4. Reversion of grant money. On July 1, 2013, the unencumbered balance of the 2013 biennium grants reverts to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

Section 5. Reduction of grants on pro rata basis. Except for the appropriation provided for in [section 1(3)], if money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels contained in [section 2], reductions to projects with funding greater than $4,500 will be made on a pro rata basis.

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 368

[HB 10]

AN ACT REDUCING CERTAIN 2009 INFORMATION TECHNOLOGY APPROPRIATIONS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE DEPARTMENT OF REVENUE, AND THE SUPREME COURT AND REVISING APPROPRIATION CONDITIONS; REVISING BIDDER CRITERIA FOR THE UNEMPLOYMENT INSURANCE TAX MODERNIZATION PROJECT; AMENDING SECTION 14, CHAPTER 3, SPECIAL LAWS OF MAY 2007, SECTION 16, CHAPTER 3, SPECIAL LAWS OF MAY 2007, AND SECTION 2, CHAPTER 435, LAWS OF 2009; TRANSFERRING FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 14, Chapter 3, Special Laws of May 2007, is amended to read:

"**Section 14. Information technology appropriations and authorizations.** (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer needed. It is the intent of this subsection that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data.

(2) Funds may not be released for the project until the chief information officer and budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration for the indicated information technology capital projects:

Agency/Project	LRITP	Federal Special Revenue	Total
DEPARTMENT OF ADMINISTRATION			
Network Upgrades	2,042,000		2,042,000
University Research Network	568,000		568,000
Public Safety Radio Consortium	4,595,000		4,595,000
Public Safety Radio Interoperability	3,500,000		3,500,000
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES			
TANF Eligibility System	7,625,000	8,600,000	16,225,000
CHIMES System (Completion)	550,000	550,000	1,100,000
Food Stamps System	6,535,000	6,535,000	13,070,000
Child and Adult Protective Services (CAPS) System	~~15,204,000~~	~~11,946,000~~	~~27,150,000~~
	4,930,240	*3,873,760*	*8,804,000*
ICD 10 (Medicaid Disease Codes)	300,000	2,700,000	3,000,000

(4) There is appropriated to the department of administration $5.618 million from the state general fund in the 2009 biennium for the operating costs associated with the network upgrades, the university research network, and the public safety radio consortium projects listed in subsection (3). If this appropriation is not fully expended for operating costs, then the remaining amount of the appropriation may be used to complete the network upgrades expansion and public safety radio consortium projects in subsection (3)."

Section 2. Section 16, Chapter 3, Special Laws of May 2007, is amended to read:

"**Section 16. Judicial branch information technology capital projects appropriation.** (1) There is appropriated to the supreme court ~~$2,909,470~~ *$2,569,470* from the LRITP for case management improvements and courtroom technology improvements in the judicial branch.

(2) Before encumbering any funds appropriated in subsection (1), the office of court administrator shall submit a project and security plan, as described in

[section 14(1)], to the chief information officer. The chief information officer shall promptly review the plan and, if necessary, make timely recommendations to the office of court administrator regarding implementation of the plan.

(3) As part of the annual report to the law and justice interim committee and house appropriations subcommittee required under 3-1-702, the office of court administrator shall include an update on the implementation of projects funded under this section.

(4) There is appropriated to the judicial branch $1,025,530 from the state general fund in the 2009 biennium for operating costs associated with the judicial branch information technology project in subsection (1). If this appropriation is not fully expended for operating costs, then the remaining amount of the appropriation may be used to complete the judicial branch project in subsection (1)."

Section 3. Section 2, Chapter 435, Laws of 2009, is amended to read:

"Section 2. Appropriations and authorizations. (1) All business application systems funded under this section must have a plan approved by the chief information officer for the design, definition, creation, storage, and security of the data associated with the application system. The security aspects of the plan must address but are not limited to authentication and granting of system privileges, safeguards against unauthorized access to or disclosure of sensitive information, and, consistent with state records retention policies, plans for the removal of sensitive data from the system when it is no longer needed. It is the intent of this subsection that specific consideration be given to the potential sharing of data with other state agencies in the design, definition, creation, storage, and security of the data.

(2) Funds may not be released for the project until the chief information officer and budget director approve the plans described in subsection (1).

(3) The following money is appropriated to the department of administration to be used only for the indicated information technology capital projects:

Agency/Project	LRITP	State Special Revenue	Federal Special Revenue	Total
DEPARTMENT OF REVENUE				
Efficiency through Imaging	~~3,366,178~~			~~3,366,178~~
	3,242,905			*3,242,905*
DEPARTMENT OF LABOR AND INDUSTRY				
Building Standards		2,400,000		2,400,000
Licensing Standards		2,250,000		2,250,000
Unemployment Insurance				
Tax Modernization		16,735,567	3,000,000	19,735,567
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES				
Medicaid Management Information				
System Replacement	3,500,000		62,000,000	65,500,000
SECRETARY OF STATE				
Information Management System	1,500,000			1,500,000

(4) The projects for which funds are appropriated to the department of public health and human services in [section 3] and this section and those projects authorized in section 14, Chapter 3, Special Laws of May 2007, are authorized for the transfer of appropriations and authority within the long-range

information technology fund type and among department of public health and human services projects. The projects for which funds are appropriated to the department of public health and human services in [section 3] and this section and those projects authorized in section 14, Chapter 3, Special Laws of May 2007, are authorized for the transfer of appropriations and authority within the federal special revenue fund type and among department of public health and human services projects. The department of public health and human services shall report changes to appropriations and authority related to the information technology projects in section 14, Chapter 3, Special Laws of May 2007, and in [section 3] and this section to the interim legislative finance committee upon occurrence.

(5) The department of labor and industry is authorized to transfer appropriations between federal and state special revenue funds for purposes of funding the unemployment insurance tax modernization project. To reduce state risk, a scoring preference for bidders of not less than ~~10%~~ *20%* of the total scoring for the request for proposals for the unemployment insurance tax modernization project must be established and may be given only to vendors who have ~~installed in at least one other state a substantially similar project, that meets~~ *substantially similar projects installed and in production in at least two other states within the past 5 years and that meet* all federal department of labor reporting requirements. In responding to the request for proposals, each vendor shall identify in what states the vendor's substantially similar ~~project has~~ *projects have* been installed, how long ~~it has~~ *the projects have* been in production, and whether the ~~project meets~~ *projects meet* all federal department of labor reporting requirements.

(6) For the item Medicaid Management Information System Replacement in subsection (3), the department of public health and human services shall provide a work plan with milestones, goals, and measures to guide the medicaid management information system replacement to the Legislative Finance Committee at its June 2009 meeting. At each legislative finance committee meeting, the department shall provide an update on its activities and progress toward achieving elements of the work plan in a format developed in conjunction with the legislative finance committee. To reduce state risk, a vendor who successfully bids on the medicaid management information system replacement project must have experience, proven performance, corporate resources, and corporate qualifications in large-scale data processing system development along with health care claims processing experience in system planning, design, development, implementation, and operation. In responding to the request for proposals, each vendor shall identify whether the vendor's proposed solution is substantially similar to a project that has been installed in another state, how long the project has been in production, and whether the project has been approved by the centers for medicare and medicaid services."

Section 4. Fund transfer. By June 30, 2011, $4,762,033 must be transferred from the long-range information technology program account in the capital projects fund type to the state general fund.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved May 12, 2011

CHAPTER NO. 369

[HB 122]

AN ACT REVISING BENEFIT AND FUNDING PROVISIONS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; INCREASING THE NORMAL RETIREMENT AGE FOR NEW HIRES; INCREASING THE AGE OF ELIGIBILITY FOR EARLY RETIREMENT FOR NEW HIRES; ELIMINATING EARLY RETIREMENT ELIGIBILITY BASED ON MEMBERSHIP SERVICE FOR NEW HIRES; CHANGING THE CALCULATION OF HIGHEST AVERAGE COMPENSATION FOR NEW HIRES; REDUCING THE MULTIPLIER USED TO CALCULATE BENEFIT PAYMENTS FOR NEW HIRES; INCREASING THE EMPLOYEE CONTRIBUTIONS DUE ON BEHALF OF NEW HIRES; AMENDING SECTIONS 19-3-108, 19-3-315, 19-3-513, 19-3-901, 19-3-902, 19-3-904, 19-3-906, 19-3-1002, 19-3-1008, 19-3-1106, 19-3-1205, 19-3-2117, 19-3-2141, AND 19-21-214, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

~~(1)~~*(2)* (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, *banked holiday time,* or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, *banked holiday time,* or annual leave paid without termination of employment.

~~(2)~~*(3)* "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

~~(3)~~*(4)* "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

~~(4)~~*(5)* "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

~~(5)~~*(6)* "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

~~(6)~~*(7)* (a) "Highest average compensation" means ~~a member's~~*:*

(i) for a member hired prior to [the effective date of this act], the highest average monthly compensation during any 36 consecutive months of membership service~~, except as otherwise provided in subsection (6)(b) or (6)(c)~~*.;*

~~(b) For a member who has attained 65 years of age but has not served at least 36 months, highest average compensation means total compensation earned divided by the number of months the member has served.~~

~~(c) For a vested member who does not have 36 consecutive months of membership service, highest average compensation means the highest total compensation earned during any 36 consecutive calendar months divided by 36.~~

(ii) for a member hired on or after [the effective date of this act], the highest average monthly compensation during any 60 consecutive months of membership service; or

(iii) in the event a member has not served the minimum specified period of service, the total compensation earned divided by the months of membership service.

~~(d)~~*(b)* Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, *banked holiday time,* and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

~~(7)~~*(8)* "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 2. Section 19-3-315, MCA, is amended to read:

"19-3-315. Member's contribution to be deducted. (1) *(a)* Each member's contribution is*:*

(i) for a member hired prior to [the effective date of this act], 6.9% of the member's compensation*; and*

(ii) for a member hired on or after [the effective date of this act], 7.9% of the member's compensation.

(b) For members hired on or after [the effective date of this act], the board shall periodically review the required contributions and recommend future adjustments to the legislature as needed to maintain the amortization schedule set by the board for the payment of the system's unfunded liability.

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, 26 U.S.C. 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's

contributions, except for the determination of a tax upon a distribution from the retirement system.

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in 19-3-2117.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 3. Section 19-3-513, MCA, is amended to read:

"19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement *or to bring a member to 25 years of membership service for the purposes of 19-3-902 or 19-3-904.*

(4) ~~Once a member has at least 25 years of membership service, purchases~~ *Purchases* of one-for-five service will be used to adjust the early retirement reduction required in 19-3-906*, if applicable*."

Section 4. Section 19-3-901, MCA, is amended to read:

"19-3-901. Eligibility for service retirement. (1) A member *hired prior to [the effective date of this act]* who has*:*

(a) attained ~~the~~ age ~~of~~ 60 and has 5 years of membership service is eligible for service retirement~~. A member who has~~*;*

(b) attained age 65 *before or* while employed in a position covered by ~~a~~ *the* public employees' retirement system is eligible for service retirement regardless of the member's years of membership service~~. A member who has~~*; or*

(c) 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) A member hired on or after [the effective date of this act] who has:

(a) attained age 65 and has 5 years of membership service is eligible for service retirement; or

(b) attained age 70 before or while employed in a position covered by the public employees' retirement system is eligible for service retirement regardless of the member's years of membership service.

~~(2)~~*(3)* In each of the circumstances described in ~~subsection~~ *subsections* (1) *and (2)*, the member has attained normal retirement age."

Section 5. Section 19-3-902, MCA, is amended to read:

"19-3-902. Eligibility for early retirement. *(1)* A member *hired prior to [the effective date of this act]* who*:*

(a) is not eligible for service retirement but has attained age 50 and has 5 years of membership service is eligible for early retirement~~. A member who~~*; or*

(b) has completed 25 years or more of membership service is eligible for early retirement.

(2) A member hired on or after [the effective date of this act] who is not eligible for service retirement but has attained age 55 and has 5 years of membership service is eligible for early retirement."

Section 6. Section 19-3-904, MCA, is amended to read:

"19-3-904. Amount of service retirement benefit. (1) ~~Except as provided in subsection (2), the~~ *The* monthly amount of service retirement benefit payable *following retirement* to a member ~~following retirement~~ *hired before [the effective date of this act] with:*

(a) less than 25 years of membership service is the greater of ~~subsection (1)(a) or (1)(b) as follows:~~

~~(a)~~ one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit *or the benefit calculated under subsection (3)*; or

~~(b) a monthly benefit that is the sum of:~~

~~(i) the actuarial equivalent of double the member's regular contributions and regular interest; plus~~

~~(ii) the actuarial equivalent of any additional contributions and regular interest.~~

~~(2) For a member with at least 25 years of membership service, the monthly amount of service retirement benefit must be equal to~~

(b) 25 or more years of membership service is the greater of ~~one-fiftieth~~ *2%* of the member's highest average compensation multiplied by the number of years of the member's total service credit ~~instead of the amount calculated under subsection (1)(a)~~ *or the benefit calculated under subsection (3)*.

(2) The monthly amount of service retirement benefit payable following retirement to a member hired on or after [the effective date of this act] with:

(a) less than 10 years of membership service is the greater of 1.5% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3);

(b) 10 or more years but less than 30 years of membership service is the greater of one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3); or

(c) 30 or more years of membership service is the greater of 2% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3).

(3) Instead of the benefit provided under subsection (1) or (2), a member may receive a monthly benefit that is the actuarial equivalent of double the member's accumulated contributions if that benefit is greater than the benefit the member would have received under subsection (1) or (2)."

Section 7. Section 19-3-906, MCA, is amended to read:

"19-3-906. Early retirement benefit. (1) *(a)* ~~The~~ *Until October 1, 2011, for a member hired prior to [the effective date of this act], the* amount of *the early* retirement benefit payable ~~to a member~~ following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that

would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904*(1)*.

~~(2)~~*(b)* The early retirement benefit must be determined as prescribed in 19-3-904*(1)*, with the exception that the benefit must be reduced as follows:

~~(a)~~*(i)* by ~~1/2 of 1%~~ *0.5%* multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained *age* 60 ~~years of age~~ or had the member completed 30 years of membership service; and

~~(b)~~*(ii)* by ~~3/10 of 1%~~ *0.3%* multiplied by the number of months in excess of the 60 months in subsection ~~(2)(a)~~ *(1)(b)(i)* but not to exceed 60 additional months ~~that~~ *by which* the retirement date precedes the date on which the member would have retired had the member attained *age* 60 ~~years of age~~ or had the member completed 30 years of membership service.

~~(3) The actuarial reduction provided for in this section must be adjusted for any one-for-five service purchased under 19-3-513 once the member has at least 25 years of membership service.~~

(2) Beginning October 1, 2011, for a member hired prior to [the effective date of this act], the amount of retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904(1), with the exception that the benefit must be reduced using actuarially equivalent factors based on the most recent valuation of the system.

(3) For a member hired on or after [the effective date of this act], the amount of the early retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 65 pursuant to 19-3-904(2),

with the exception that the benefit must be reduced using actuarially equivalent factors based on the most recent valuation of the system.

(4) The actuarial reduction provided for in this section must be adjusted for any one-for-five service purchased under 19-3-513."

Section 8. Section 19-3-1002, MCA, is amended to read:

"19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service retirement or early retirement but who has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008.

(2) An active member who *was hired prior to [the effective date of this act] and* is 60 years of age or older ~~and~~ *or was hired on or after [the effective date of this act] and is 65 years of age or older and* who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual ~~becoming~~ *who became* a member after February 24, 1991, *and before [the effective date of this act]* who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3).

(4) A member hired on or after [the effective date of this act] who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(4)."

Section 9. Section 19-3-1008, MCA, is amended to read:

"19-3-1008. Benefit for disability. (1) The monthly amount of the disability retirement benefit payable to a member under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's highest average compensation.

(2) Except as provided in subsection (3), the monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to ~~one-fiftieth~~ *2%* of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(4) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(4) who has:

(a) more than 5 but less than 10 years of membership service is a retirement benefit equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;

(b) 10 or more but less than 30 years of membership service is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(c) 30 or more years of membership service is a retirement benefit equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

~~(4)~~*(5)* Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature."

Section 10. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — *reporting obligations — liability* — exceptions. (1) A retired member under 65 years of age who *was hired prior to [the effective date of this act], who has been terminated from employment for at least 90 days, and who* is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 960 hours in that calendar year.

(2) A ~~retiree~~ *retired member who is* 65 years of age or older *and under 70 1/2 years of age, who has been terminated from employment for at least 90 days, and* who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement ~~benefits~~ *benefit*, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) *(a)* The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

(b) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (3)(a) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who declines optional membership as provided in 19-3-412.

(6) Except as provided in subsection (5), if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired

member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

~~(6)~~*(7)* For the purposes of this section, "employment covered by the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102."

Section 11. Section 19-3-1205, MCA, is amended to read:

"19-3-1205. Amount of survivorship benefit. ~~The~~ *(1) For a member hired prior to [the effective date of this act], the* survivorship benefit payable to ~~a~~ *the* member's designated beneficiary is the actuarial equivalent of:

~~(1)~~*(a)* the accrued portion of the early retirement benefit pursuant to 19-3-906*(1)* that would have been payable to the member commencing at age 50 if the member had not attained age 50 or earned 25 years of membership service at the time of death;

~~(2)~~*(b)* if the deceased member had attained age 50 or earned 25 years of membership service at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

~~(3)~~*(c)* if the deceased member had attained age 60 or earned 30 years of membership service at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.

(2) For a member hired on or after [the effective date of this act], the survivorship benefit payable to the member's designated beneficiary is the actuarial equivalent of:

(a) the accrued portion of the early retirement benefit pursuant to 19-3-906(3) that would have been payable to the member commencing at age 55 if the member had not attained age 55 at the time of death;

(b) if the deceased member had attained age 55 at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(c) if the deceased member had attained age 65 at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death."

Section 12. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member's retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141; and

(b) ~~on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27%~~ *on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27%* of compensation must be allocated in the following order:

~~(i) to the administrative account used by the board to meet the expenses of the plan's startup loan, until paid in full;~~

~~(ii)~~*(i)* to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

~~(iii)~~*(ii)* to the long-term disability plan trust fund to provide disability benefits to eligible members.

(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses."

Section 13. Section 19-3-2141, MCA, is amended to read:

"19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking. (1) *For members hired prior to [the effective date of this act]:*

(a) ~~Except~~ *except* as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513~~.~~*;*

(b) ~~An~~ *an* eligible member with at least 25 years of membership service is entitled to a disability benefit equal to ~~one-fiftieth~~ *2%* of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(2) For members hired on or after [the effective date of this act], the monthly disability benefit payable to a disabled member eligible under the provisions of this section who has:

(a) more than 5 but less than 10 years of membership service is equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;

(b) 10 or more but less than 30 years of membership service is equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(c) 30 or more years of membership service is equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

~~(2)~~*(3)* Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) for members hired prior to [the effective date of this act]:

~~(b)~~*(i)* if the member's disability occurred when the member was 60 years of age or less, the benefit may be paid only until the member reaches 65 years of age; *and*

~~(c)~~*(ii)* if the member's disability occurred after the member reached 60 years of age, the benefit may be paid for no more than 5 years; ~~and~~

(c) for members hired on or after [the effective date of this act]:

(i) if the member's disability occurred when the member was less than 65 years of age, the benefit may be paid only until the member reaches 65 years of age; and

(ii) if the member's disability occurred after the member reached 65 years of age, the benefit may be paid for no more than 5 years; and

(d) the member shall satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

~~(3)~~*(4)* Application for a disability benefit must be made in accordance with 19-3-1005.

~~(4)~~*(5)* The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

~~(5)~~*(6)* If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125.

~~(6)~~*(7)* The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

~~(7)~~*(8)* The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section."

Section 14. Section 19-21-214, MCA, is amended to read:

"19-21-214. Contributions and allocations for employees in positions covered under the public employees' retirement system. (1) The contribution rates for employees in positions covered under the public employees' retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member's contribution rate must be the rate provided in 19-3-315; and

(b) the employer's contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), of the employer's contribution:

(a) an amount equal to:

(i) 4.49% of compensation must be allocated to the participant's program account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan under the public employees' retirement system as the plan choice rate; and

(iii) 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b); and

(b) ~~on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27%~~ *on July 1, 2009, continuing until the additional*

employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated ~~in the following order:~~

~~(i) to the administrative account used by the public employees' retirement board to meet the expenses of the defined contribution plan's startup loan, until paid in full; and~~

~~(ii)~~ to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability.

(3) The allocations under subsection (2) are subject to adjustment by the public employees' retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121."

Section 15. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 370

[HB 159]

AN ACT RESTRICTING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE FISH, WILDLIFE, AND PARKS COMMISSION TO REGULATE FIREARMS, FIREARM ACCESSORIES, AND AMMUNITION; AND AMENDING SECTIONS 87-1-201, 87-1-301, 87-1-303, 87-1-304, AND 87-3-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) ~~The~~ *Except as provided in subsection (11), the* department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) ~~The~~ *Except as provided in subsection (11), the* department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or

use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) ~~The~~ *Except as provided in subsection (11), the* department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count.

(11) The department may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-3-301;

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-3-401."

Section 2. Section 87-1-301, MCA, is amended to read:

"87-1-301. Powers of commission. (1) ~~The~~ *Except as provided in subsection (7), the* commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters.

(7) The commission may not regulate the use or possession of firearms, firearm accessories, or ammunition, including the chemical elements of ammunition used for hunting. This does not prevent:

(a) the restriction of certain hunting seasons to the use of specified hunting arms, such as the establishment of special archery seasons;

(b) for human safety, the restriction of certain areas to the use of only specified hunting arms, including bows and arrows, traditional handguns, and muzzleloading rifles;

(c) the restriction of the use of shotguns for the hunting of deer and elk pursuant to 87-3-301;

(d) the regulation of migratory game bird hunting pursuant to 87-3-403; or

(e) the restriction of the use of rifles for bird hunting pursuant to 87-3-401."

Section 3. Section 87-1-303, MCA, is amended to read:

"87-1-303. Rules for use of lands and waters. (1) ~~The~~ *Except as provided in 87-1-301(7), the* commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) ~~The~~ *Except as provided in 87-1-301(7), the* commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public health, public safety, public welfare, and protection of property and public resources in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas that are legally accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement."

Section 4. Section 87-1-304, MCA, is amended to read:

"87-1-304. Fixing of seasons and bag and possession limits. (1) (a) The commission may:

(i) fix seasons, bag limits, possession limits, and season limits;

(ii) open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and

(iii) declare areas open to the hunting of deer, antelope, elk, moose, sheep, goat, mountain lion, bear, and wolf by persons holding an archery stamp and the required license, permit, or tag and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, goat, mountain lion, bear, and wolf in those areas.

(b) ~~The~~ *Subject to the provisions of 87-1-301(7), the* commission may restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences.

(c) The commission may declare areas open to special license holders only and issue special licenses in a limited number when the commission determines, after proper investigation, that a special season is necessary to ensure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. The commission may declare a special season and issue special licenses when game birds, animals, or fur-bearing animals are causing damage to private property or when a written complaint of damage has been filed with the commission by the owner of that property. In determining to whom special licenses must be issued, the commission may, when more

applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system must be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) The commission may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. The commission may declare a closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) The commission may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. The commission may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game, fur-bearing animals, game birds, and nongame birds. The commission may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) The commission may declare certain fishing waters closed to fishing except by persons under 15 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 15 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 5. Section 87-3-301, MCA, is amended to read:

"87-3-301. Shotgun loads regulated by department. A person may not use a shotgun to hunt deer or elk except with ~~weapon type and loads~~ *double-ought buckshot or rifled slugs* as specified by the department."

Approved May 12, 2011

CHAPTER NO. 371

[HB 165]

AN ACT REVISING AND CLARIFYING THE DISTRIBUTION OF PROCEEDS AND INCOME FROM CERTAIN STATE TRUST LANDS; PROVIDING THAT INCOME RECEIVED FROM CERTAIN ISLANDS, ABANDONED RIVERBEDS, RIVERBEDS, AND POWER SITES BE DEPOSITED IN THE GUARANTEE ACCOUNT AND THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT FOR DISTRIBUTION TO PUBLIC SCHOOLS; INCLUDING STATE REIMBURSEMENT FOR SCHOOL FACILITIES AS A PURPOSE OF THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; AMENDING SECTIONS 17-3-1003, 20-9-516, 77-1-102, 77-1-103, AND 77-4-208, MCA; AMENDING SECTION 32, CHAPTER 486, LAWS OF 2009; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-1003, MCA, is amended to read:

"17-3-1003. Support of state institutions. (1) ~~For~~ *Except as provided in subsection (5), for* the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109, the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid to the state treasurer, who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1)*,* ~~and~~ (3), *and (5),* all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109 and subsection (4) of this section, all money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution.

(4) The board of regents shall designate, at least once a biennium, whether the timber sale proceeds from Montana university system lands must be distributed to the beneficiaries or placed in the permanent fund.

(5) Except as provided in 77-1-109, income received from certain lands and riverbeds pursuant to 77-1-103(4) or 77-4-208 must be deposited as follows:

(a) from July 1, 2011, through June 30, 2014, to the guarantee account provided for in 20-9-622; and

(b) on or after July 1, 2014, to the school facility and technology account provided for in 20-9-516."

Section 2. Section 20-9-516, MCA, is amended to read:

"20-9-516. School facility and technology account. (1) There is a school facility and technology account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools for:

(a) major deferred maintenance;

(b) improving energy efficiency in school facilities;

(c) critical infrastructure in school districts;

(d) emergency facility needs; ~~and~~

(e) technological improvements*; and*

(f) state reimbursement for school facilities as provided in 20-9-371.

(2) There must be deposited in the account:

(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;

(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622~~; and~~*; and*

~~(c) the rental income received from power site leases as provided in 77-4-208~~

(c) the income received from certain lands and riverbeds as provided in 17-3-1003(5)."

Section 3. Section 77-1-102, MCA, is amended to read:

"77-1-102. Ownership of certain islands, ~~and~~ abandoned riverbeds, *and riverbeds.* *(1)* ~~All~~ *The following lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:*

(a) all lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of ~~such~~ *the* stream or lake as ~~the same are~~ shown by the United States survey ~~thereof~~ *of the stream or lake;* ~~and~~

(b) all islands existing in the navigable streams or lakes in this state ~~which~~ *that* have not been surveyed by the government of the United States*;* and

(c) all lands ~~which~~ *that* at any time in the past ~~comprised such~~ *constituted* an island or ~~any~~ part ~~thereof~~ *of an island in a navigable stream or lake*, except ~~such~~ *those* lands ~~as~~ *that* are occupied by and belong to the adjacent landowners as accretions~~, belong to the state of Montana to be held in trust for the benefit of the public schools of the state~~.

(2) State-owned riverbeds are public lands of the state that are held in trust for the people as provided in Article X, section 11, of the Montana constitution."

Section 4. Section 77-1-103, MCA, is amended to read:

"77-1-103. Administration of lands. *(1)* The board shall ~~lease or~~ sell lands under ~~77-1-102~~ *77-1-102(1)* in the same manner as other school lands of the state are ~~leased and~~ sold.

(2) The board may sell *the lands under 77-1-102(1)* or lease ~~these~~ *the* lands *under 77-1-102* without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104.

(3) The proceeds from the ~~leasing and~~ *leasing and* sale of ~~such~~ *the* lands *under 77-1-102* ~~shall~~ *must* be disposed of in the same manner as disposition is made of the proceeds from the ~~leasing and~~ *leasing and* sale of school lands of the state.

(4) The income received from the leasing, licensing, or other use of lands under 77-1-102(1) or riverbeds under 77-1-102(2) must be deposited in accordance with 17-3-1003(5)."

Section 5. Section 77-4-208, MCA, is amended to read:

"77-4-208. Rental for power sites — deposit of rental money in proper accounts. (1) The rental payment to the state for power sites must be paid annually or semiannually, and the rental may not be less than the full market value of the estate or interest disposed of through the granting of the lease or license. The value must be carefully ascertained from all available sources.

(2) ~~Ninety-five percent of all~~ *Beginning July 1, 2011, all* rental payments received under this section must be deposited ~~in the school facility and technology account provided for in 20-9-516. The remaining 5% of the rental payments received must be deposited annually in the public school permanent fund provided for in 20-9-621~~ *in accordance with 17-3-1003(5).*"

Section 6. Section 32, Chapter 486, Laws of 2009, is amended to read:

"**Section 32. Coordination instruction.** If House Bill No. 152 and [this act] are both passed and approved, then [section 22] of House Bill No. 152 must be amended as follows:

"NEW SECTION. **Section 22. Applicability.** [Section 18] applies to rental payments beginning ~~January 1, 2011~~ *2012 July 1, 2011*.""

Section 7. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 372

[HB 310]

AN ACT REVISING THE LAWS RELATING TO INITIATIVES AND REFERENDA; REQUIRING STATEMENTS ON PETITIONS FOR INITIATIVES AND REFERENDA AND ON THE BALLOT THAT CLEARLY INDICATE THAT A "YES" VOTE SUPPORTS A BALLOT ISSUE AND THAT A "NO" VOTE OPPOSES A BALLOT ISSUE; REQUIRING A SINGLE STATEMENT OF PURPOSE AND IMPLICATION; AMENDING SECTIONS 13-27-202, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-312, 13-27-315, AND 13-27-501, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-202, MCA, is amended to read:

"13-27-202. Recommendations — approval of form required. (1) A proponent of a ballot issue shall submit the text of the proposed *ballot* issue to the secretary of state together with draft ballot *issue* statements intended to comply with 13-27-312. Petitions may not be circulated for the purpose of signature gathering more than 1 year prior to the final date for filing the signed petition with the county election administrator. The secretary of state shall forward a copy of the text of the proposed issue and statements to the legislative services division for review.

(2) (a) The legislative services division staff shall review the text and statements for clarity, consistency, and conformity with the most recent edition of the bill drafting manual furnished by the legislative services division, the requirements of 13-27-312, and any other factors that the staff considers when drafting proposed legislation.

(b) Within 14 days after submission of the text and statements, the legislative services division staff shall recommend in writing to the proponent revisions to the text and revisions to the statements to make them consistent with any recommendations for change to the text and the requirements of 13-27-312 or state that no revisions are recommended.

(c) The proponent shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended revisions. If revisions are not recommended, a response is not required.

(3) The legislative services division shall furnish a copy of the correspondence provided for in subsection (2) to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

(4) Before a petition may be circulated for signatures, the final text of the proposed issue and ballot statements must be submitted to the secretary of state. The secretary of state shall reject the proposed issue if the text or a ballot statement contains material not submitted to the legislative services division that is a substantive change not recommended by the legislative services division. If accepted, the secretary of state shall refer a copy of the proposed issue and statements to the attorney general for a determination as to the legal

sufficiency of the issue and for approval of the petitioner's ballot statements and for a determination pursuant to 13-27-312 as to whether a fiscal note is necessary.

(5) (a) The secretary of state shall review the legal sufficiency opinion and ballot statements of the petitioner, as approved by the attorney general and received pursuant to 13-27-312.

(b) If the attorney general approves the proposed issue, the secretary of state shall immediately send to the person submitting the proposed issue a sample petition form, including the text of the proposed issue, the statement of purpose *and implication*, and the *yes and no* statements ~~of implication~~, as prepared by the petitioner, reviewed by the legislative services division, and approved by the attorney general and in the form provided by this part. A signature gatherer may circulate the petition only in the form of the sample prepared by the secretary of state. The secretary of state shall immediately provide a copy of the sample petition form to any interested parties who have made a request to be informed of an approved petition.

(c) If the attorney general rejects the proposed issue, the secretary of state shall send written notice to the person who submitted the proposed issue of the rejection, including the attorney general's legal sufficiency opinion.

(d) If an action is filed challenging the validity of the petition, the secretary of state shall immediately notify the person who submitted the proposed issue."

Section 2. Section 13-27-204, MCA, is amended to read:

"13-27-204. Petition for initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by initiative:

PETITION TO PLACE INITIATIVE NO.....
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of one-half of the counties sign this petition and the total number of voters signing this petition is ....., this initiative will appear on the next general election ballot. If a majority of voters vote for this initiative at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following initiative on the ....., 20....., general election ballot:

(Title of initiative written pursuant to 13-27-312)
(Statement of *purpose and* implication written pursuant to 13-27-312)
(Yes and no statements written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the initiative, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the initiative on the ballot and does not necessarily mean the signer agrees with the initiative.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 3. Section 13-27-205, MCA, is amended to read:

"13-27-205. Petition for referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

PETITION TO PLACE REFERENDUM
NO..... ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing the petition is ....., Senate (House) Bill Number ..... will appear on the next general election ballot. If a majority of voters vote for this referendum at that election it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following Senate (House) Bill Number ....., passed by the legislature on ..... on the next general election ballot:

(Title of referendum written pursuant to 13-27-312)
(Statement of *purpose and* implication written pursuant to 13-27-312)
(Yes and no statements written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the referendum, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the referendum on the ballot and does not necessarily mean the signer agrees with the referendum.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, legislative representative district number, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 4. Section 13-27-206, MCA, is amended to read:

"13-27-206. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there will be a constitutional convention:

PETITION TO PLACE INITIATIVE NO....., CALLING FOR A CONSTITUTIONAL CONVENTION, ON THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ....., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention, the legislature shall call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the ....., 20....., general election ballot:

(Title of the initiative written pursuant to 13-27-312)
(Statement of *purpose and* implication written pursuant to 13-27-312)
(Yes and no statements written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine or 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must also contain spaces for the signature, residence address, legislative representative district number, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 5. Section 13-27-207, MCA, is amended to read:

"13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for an initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO..... ON THE ELECTION BALLOT

(a) If 10% of the voters in each of one-half of the counties sign this petition and the total number of voters signing the petition is ....., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ....., 20....., general election ballot:

(Title of the proposed constitutional amendment written pursuant to 13-27-312)
(Statement of *purpose and* implication written pursuant to 13-27-312)
(Yes and no statements written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the constitutional amendment, which appears (on the reverse side of, attached to, etc., as applicable) this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

(2) Numbered lines must follow the heading. Each numbered line must contain spaces for the signature, date, residence address, county of residence, and printed last name and first and middle initials of the signer. In place of a residence address, the signer may provide the signer's post-office address or the signer's home telephone number. An address provided on a petition by the signer that differs from the signer's address as shown on the signer's voter registration card may not be used as the only means to disqualify the signature of that petition signer."

Section 6. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of proposed ballot issue and statements by attorney general — preparation of fiscal note. (1) Upon receipt of a proposed ballot issue and statements from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the proposed *ballot* issue for legal sufficiency as provided in this section and shall determine whether the ballot statements comply with the requirements of this section.

(2) The attorney general shall, in reviewing the ballot statements, endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general shall review the ballot statements to determine if they contain the following matters:

(a) a statement *of purpose and implication*, not to exceed ~~100~~ *135* words, explaining the purpose *and implication* of the issue; and

(b) ~~statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the issue~~ *yes and no statements in the form prescribed in subsection (6)*.

(3) If the proposed ballot issue has an effect on the revenue, expenditures, or fiscal liability of the state, the attorney general shall order a fiscal note incorporating an estimate of the effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the ballot issue, is responsible for preparing the fiscal note and shall return it to the attorney general within 10 days. If the fiscal note indicates a fiscal impact, the attorney general shall prepare a fiscal statement of no more than 50 words, and the statement must be used on the petition and ballot if the issue is placed on the ballot.

(4) The ballot statements must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue.

(5) Unless altered by the court under 13-27-316, the statement of purpose *and implication* is the petition title for the issue circulated by the petition and the ballot title if the issue is placed on the ballot.

(6) The ~~statements of implication~~ *yes and no statements* must be written so that a positive vote indicates support for the issue and a negative vote indicates opposition to the issue and must be placed beside the diagram provided for marking of the ballot in a manner similar to ~~but not limited to~~ the following ~~example~~:

☐ ~~FOR~~ *YES* ~~extending the right to vote to persons 18 years of age~~
(insert the type of ballot issue and its number)

☐ ~~AGAINST~~ *NO* ~~extending the right to vote to persons 18 years of age~~
(insert the type of ballot issue and its number)

(7) The attorney general shall review the proposed ballot issue for legal sufficiency. As used in this part, "legal sufficiency" means that the petition complies with statutory and constitutional requirements governing submission of the proposed issue to the electors. Review of the petition for legal sufficiency does not include consideration of the substantive legality of the issue if approved by the voters. The attorney general shall also determine if the proposed issue conflicts with one or more issues that may appear on the ballot at the same election.

(8) (a) Within 30 days after receipt of the proposed issue from the secretary of state, the attorney general shall forward to the secretary of state an opinion as to the issue's legal sufficiency.

(b) If the attorney general determines that the proposed ballot issue is legally sufficient, the attorney general shall also forward to the secretary of state the petitioner's ballot statements that comply with the requirements of this section. If the attorney general determines in writing that a ballot statement clearly does not comply with the requirements of this section, the attorney general shall prepare a statement that complies with the requirements of this section, forward that statement to the secretary of state as the approved statement, and provide a copy to the petitioner. The attorney general shall give the secretary of state notice of whether the proposed issue conflicts with one or more issues that may appear on the ballot at the same election.

(c) If the attorney general determines that the proposed ballot issue is not legally sufficient, the secretary of state may not deliver a sample petition form unless the attorney general's opinion is overruled pursuant to 13-27-316 and the attorney general has approved or prepared ballot statements under this section."

Section 7. Section 13-27-315, MCA, is amended to read:

"13-27-315. Statements by attorney general on issues referred by legislature. Upon receipt of ~~an~~ *a ballot* issue referred by the legislature from the secretary of state pursuant to 13-27-209, the attorney general shall prepare and forward to the secretary of state, within 30 days, ballot statements as provided in 13-27-312, except that the attorney general may not prepare ~~statements~~ *a statement* of *purpose and* implication of a vote for or against a ballot issue if the ~~statements have~~ *statement has* been provided by the legislature."

Section 8. Section 13-27-501, MCA, is amended to read:

"13-27-501. Secretary of state to certify ballot form. (1) The secretary of state shall furnish to the official of each county responsible for preparation of the ballots, at the same time as the election administrator certifies the names of

the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

(2) The secretary of state shall list for each *ballot* issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the attorney general's explanatory statement, if applicable;

(e) the fiscal statement, if applicable;

(f) the ~~statements~~ *statement* of ~~the~~ *purpose and* implication ~~of a vote for or against the issue that are to be placed beside the diagram for marking the ballot~~;

(g) the yes and no statements; and

~~(g)~~*(h)* a statement that the *ballot* issue conflicts with one or more issues, referenced by number, that also appear on the ballot, if applicable.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, when required to do so, shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;

(b) an amendment to the constitution proposed by the legislature;

(c) an act of the legislature referred by referendum petition; or

(d) a law or constitutional amendment proposed by initiative petition."

Section 9. Effective date. [This act] is effective January 1, 2013.

Approved May 12, 2011

CHAPTER NO. 373

[HB 460]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO ESTABLISH BY RULE A METHOD FOR VALUING TOWNHOUSES; DEFINING "TOWNHOUSE" AND "TOWNHOME"; PROVIDING THAT THE UNIT OWNERSHIP ACT MAY APPLY TO TOWNHOUSES; CONFORMING PROVISIONS OF THE UNIT OWNERSHIP ACT WITH THE DEFINITIONS OF "TOWNHOUSE" AND "TOWNHOME"; AMENDING SECTIONS 15-8-111, 70-23-102, 70-23-103, 70-23-301, AND 76-3-203, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization-of-net-income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide;

(c) *(i)* for condominium property, the department shall establish the value as provided in subsection (4); *and*

(ii) for a townhome or townhouse, as defined in 70-23-102, the department shall determine the value in a manner established by the department by rule; and

(d) as otherwise authorized in Titles 15 and 61.

(4) (a) Subject to subsection (4)(c), if sufficient, relevant information on comparable sales is available, the department shall use the comparable sales method to appraise residential condominium units. Because the undivided interest in common elements is included in the sales price of the condominium units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(b) Subject to subsection (4)(c), if sufficient, relevant information on income is made available to the department, the department shall use the capitalization-of-net-income method to appraise commercial condominium units. Because the undivided interest in common elements contributes directly to the income-producing capability of the individual units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(c) If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the construction-cost method. When using the construction-cost method, the department shall determine the value of the entire condominium project and allocate a percentage of the total value to each

individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed in the declaration conforms to market value.

(5) For purposes of taxation, assessed value is the same as appraised value.

(6) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(7) The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-222.

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

(8) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

Section 2. Section 70-23-102, MCA, is amended to read:

"70-23-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) expenses of administration, maintenance, repair, or replacement of the common elements;

(b) expenses agreed upon as common by all the unit owners; and

(c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the particular condominium.

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter. *The term does not include a townhome or townhouse.*

(6) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter.

(7) "General common elements", unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) the land on which the building is located, except any portion of the land included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety or normally in common use.

(8) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of the other units.

(9) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means the owners of more than 50% in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in the element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means the percentage in the aggregate of undivided ownership.

(10) "Manager" means the manager, board of managers, or other person in charge of the administration of or managing the property.

(11) "Project" means a real estate condominium project whereby a condominium of two or more units located on property submitted to the provisions of this chapter are offered or proposed to be offered for sale.

(12) "Property" means the land, all buildings, improvements, and structures on the land, and all easements, rights, and appurtenances belonging to the land that are submitted to the provisions of this chapter.

(13) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or other instruments or documents affecting the title to real property.

(14) "Townhome" or "townhouse" means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

~~(14)~~*(15)* "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts of the property intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

~~(15)~~*(16)* "Unit designation" means the number, letter, or combination of numbers and letters designating a unit in the declaration.

~~(16)~~*(17)* "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of

voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit must be considered a unit owner."

Section 3. Section 70-23-301, MCA, is amended to read:

"70-23-301. Contents of declaration. A declaration must contain:

(1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;

(2) the name by which the property will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of the person which must be within the county in which the property is located;

(8) an exhibit containing certification from the applicable local government that the condominiums*, townhomes, or townhouses* are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable."

Section 4. Section 76-3-203, MCA, is amended to read:

"76-3-203. Exemption for certain condominiums. Condominiums*, townhomes, or townhouses, as those terms are defined in 70-23-102,* constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums*, townhomes, or townhouses* and any applicable park dedication requirements in 76-3-621 are complied with; or

(2) the condominium*, townhome, or townhouse* proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect."

Section 5. Section 70-23-103, MCA, is amended to read:

"70-23-103. Applicability — submission by declaration required — *optional declaration for townhouses.* *(1)* In order to submit any property to the provisions of this chapter, the sole owner or sole lessee or all of the owners or all of the lessees ~~thereof~~ *of the property* shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration ~~shall~~ *must* be executed in accordance with 70-23-301.

(2) A declaration for a townhome or townhouse may be executed under this section. The provisions of this chapter apply to townhomes or townhouses only if a declaration is executed under this section."

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [Section 1] applies to tax years beginning after December 31, 2011.

Approved May 12, 2011

CHAPTER NO. 374

[HB 560]

AN ACT INCREASING PUBLIC INVOLVEMENT IN THE CREATION AND OPERATION OF URBAN RENEWAL DISTRICTS; REQUIRING THE URBAN RENEWAL DISTRICT TO INCLUDE THE AMOUNT OF THE TAX INCREMENT OF THE DISTRICT IN THE REPORT FILED WITH THE MUNICIPALITY; AND AMENDING SECTIONS 7-15-4214, 7-15-4215, AND 7-15-4237, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4214, MCA, is amended to read:

"7-15-4214. Hearing on urban renewal plan required. (1) The local governing body shall hold a public hearing on an urban renewal plan ~~after public notice thereof~~ *prior to adoption as provided in 7-1-4131. Notice of the hearing must be published as provided in 7-1-4127, and mail notice as provided in 7-1-4129 must be given to property owners of the district.*

(2) Upon receipt of the recommendations of the planning commission~~,~~ or if no recommendations are received within ~~said~~ 60 days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan."

Section 2. Section 7-15-4215, MCA, is amended to read:

"7-15-4215. Notice of hearing on urban renewal plan. (1) The notice required by 7-15-4214(1) must be given by publication as provided in 7-1-4127 and by mailing a notice of the hearing, not less than 10 days prior to the date of the hearing, to the persons whose names appear on the county treasurer's tax ~~roll~~ *records* as the owners, reputed owners, or purchasers under contracts for deed of the property, at the address shown on the tax ~~roll~~ *record*.

(2) The notice must*:*

(a) describe the time, date, place, and purpose of the hearing~~,~~*;*

(b) ~~generally identify~~ *specify the proposed boundary of* the urban renewal area affected~~,~~*;*

(c) ~~and~~ outline the general scope of the urban renewal plan under consideration*;*

(d) specify the goals the municipality has in the rehabilitation and renewal of the area; and

(e) indicate the method of financing the urban renewal area and whether the municipality intends to use tax increment financing and bonds to be paid from tax increment financing."

Section 3. Section 7-15-4237, MCA, is amended to read:

"7-15-4237. Annual report. (1) An agency authorized to transact business and exercise powers under *part 43 and* this part ~~and part 43~~ shall file with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year.

(2) The report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses *and the amount of the tax increment* as of the end of the fiscal year.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that *the* ~~such~~ report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency."

Approved May 12, 2011

CHAPTER NO. 375

[HB 561]

AN ACT CHANGING THE CRITERIA FOR FACTORS INVOLVED IN THE CREATION AND OPERATION OF URBAN RENEWAL DISTRICTS; REQUIRING THE FINDINGS BY A MUNICIPALITY THAT CERTAIN URBAN RENEWAL CONDITIONS EXIST; AND AMENDING SECTION 7-15-4210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4210, MCA, is amended to read:

"7-15-4210. Resolution of necessity required to utilize provisions of part. ~~No~~ *A* municipality ~~shall~~ *may not* exercise any of the powers ~~hereafter conferred upon~~ *authorized* ~~municipalities~~ by ~~this part and~~ part 43 *and this part* until after its local governing body ~~shall have~~ *has* adopted a resolution finding that:

(1) ~~one or more blighted areas exist in such~~ *one or more blighted areas exist in the* municipality *by finding that at least three of the factors listed in 7-15-4206(2) apply to the area or a part of the area*; and

(2) the rehabilitation, redevelopment, or ~~a combination thereof of such~~ *both of an* area ~~or areas~~ ~~is~~ *or areas are* necessary in the interest of the public health, safety, morals, or welfare of the residents of ~~such~~ *the* municipality."

Approved May 12, 2011

CHAPTER NO. 376

[HB 562]

AN ACT REQUIRING NOTIFICATION OF THE COUNTY AND SCHOOLS REGARDING VARIOUS PROVISIONS OF AN URBAN RENEWAL DISTRICT WITHIN THE JURISDICTION OF A MUNICIPALITY; REQUIRING NOTIFICATION OF THE INTENDED USE OF TAX INCREMENT FINANCING TO THE COUNTY AND SCHOOLS; REQUIRING THE ANNUAL REPORT OF URBAN RENEWAL DISTRICTS TO BE MADE AVAILABLE UPON REQUEST TO THE COUNTY AND SCHOOLS WITHIN THE TERRITORIAL JURISDICTION OF A MUNICIPALITY; AND AMENDING SECTIONS 7-15-4211, 7-15-4221, 7-15-4237, AND 7-15-4282, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4211, MCA, is amended to read:

"7-15-4211. Preparation of comprehensive development plan for municipality. For the purpose of approving an urban renewal plan and other municipal purposes, ~~authority is hereby vested in every~~ *a* municipality *may*:

(1) ~~to~~ prepare, ~~to~~ adopt, and ~~to~~ revise from time to time a comprehensive plan or parts ~~thereof~~ *of a plan* for the physical development of the municipality as a whole*,* ~~(giving due regard to the environs and metropolitan surroundings)~~ *with consideration for the county and school districts that include municipal territory*;

(2) ~~to~~ establish and maintain a planning commission for ~~such~~ *that* purpose and related municipal planning activities; and

(3) ~~to~~ make available and appropriate necessary funds ~~therefor~~ *for municipal planning activities*."

Section 2. Section 7-15-4221, MCA, is amended to read:

"7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, the modification is subject to any rights at law or in equity that a lessee or purchaser or the lessee's or purchaser's successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) Any urban renewal plan proposed for modification to provide tax increment financing for the district must be proposed with consideration for the county and school districts that include municipal territory.

~~(3)~~*(4)* All urban renewal plans approved or modified by resolution prior to May 8, 1979, are validated.

~~(4)~~*(5)* A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan."

Section 3. Section 7-15-4237, MCA, is amended to read:

"7-15-4237. Annual report. (1) An agency authorized to transact business and exercise powers under *part 43 and* this part ~~and part 43~~ shall file with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year. *A copy of the annual report must be made available upon request to the county and school districts that include municipal territory.*

(2) The report ~~shall~~ *must* include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of the fiscal year.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that ~~such~~ *the* report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency."

Section 4. Section 7-15-4282, MCA, is amended to read:

"7-15-4282. Authorization for tax increment financing. *(1)* Any urban renewal plan as defined in 7-15-4206, industrial district ordinance adopted pursuant to 7-15-4299, technology district ordinance adopted pursuant to 7-15-4295, or aerospace transportation and technology district ordinance

adopted pursuant to 7-15-4296 may contain a provision or be amended to contain a provision for the segregation and application of tax increments as provided in 7-15-4282 through 7-15-4299.

(2) The tax increment financing provision must take into account the effect on the county and school districts that include municipal territory."

Approved May 12, 2011

CHAPTER NO. 377

[HB 565]

AN ACT CLARIFYING REQUIREMENTS FOR PROVIDING CHILDREN WITH MENTAL HEALTH NEEDS WITH IN-STATE SERVICE ALTERNATIVES TO OUT-OF-STATE PLACEMENT; REVISING DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PROCEDURES FOR DETERMINING PLACEMENT OF CHILDREN IN OUT-OF-STATE SERVICES; REVISING REPORTING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 52-2-308, 52-2-310, AND 52-2-311, MCA.

WHEREAS, the 1993 Montana Legislature recognized that some Montana children have mental health and other needs that require services from multiple agencies; and

WHEREAS, the 1993 Legislature expressed a desire to provide services to these children in their homes or communities whenever possible and to use out-of-state providers as a last resort; and

WHEREAS, subsequent legislatures have strengthened the policy first established in 1993 by encouraging development of an array of in-state services so that children placed out of state may return home and children in the state are able to remain in their homes, community, or the state; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to establish an in-state pool of providers and protocol to give these children opportunities for services in their homes or communities from this pool of providers as a last resort before out-of-state placements; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to report to the Legislature on the number of out-of-state placements and the attempts to continue to provide services in Montana; and

WHEREAS, information from the Department of Public Health and Human Services indicates that out-of-state placements of children have decreased by 40% in the last 4 years but still continue.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-308, MCA, is amended to read:

"52-2-308. Rulemaking. The department shall adopt rules necessary to implement ~~52-2-301 through 52-2-304 and 52-2-309~~ *this part*. The rules must be adopted in cooperation with the committee established in 52-2-303."

Section 2. Section 52-2-310, MCA, is amended to read:

"52-2-310. Development and use of ~~in-state pool of providers~~ *qualified provider pools.* *(1)* In order to accomplish the goals of 52-2-301, the department shall establish a pool of qualified in-state providers identified as willing and able to meet the significant needs of high-risk children with multiagency service needs who are currently placed or may be placed out of state. ~~The~~ *Using existing staff resources, the* department shall design *and*

implement a process in which licensed providers qualify for ~~the~~ *a* pool by demonstrating their ability to provide mental health services for children:

~~(1)~~*(a)* through use of available federal and state special revenue and state general fund money;

(b) in the least restrictive setting available; ~~and~~

~~(2)~~*(c)* in accordance with the state's goal of using a wraparound philosophy of care *and planning process; and*

(d) using criteria established by the department to address the specialized needs of high-risk children with multiagency service needs.

(2) (a) The department shall allow any willing and qualified in-state provider to review a case involving a high-risk child with multiagency service needs and to propose a plan of care for providing services in state to the child.

(b) Prior to contracting with a provider for the delivery of in-state services, the department must determine that the plan of care submitted by the in-state provider is both cost-effective and in the best interests of the child.

(c) If a qualified in-state provider proposes a plan of care for providing in-state services to the child, the department may not certify a child for placement with an out-of-state provider unless it denies the plan of care proposed by the in-state provider."

Section 3. Section 52-2-311, MCA, is amended to read:

"52-2-311. Out-of-state placement monitoring and reporting. (1) The department shall collect the following information regarding high-risk children with multiagency service needs:

(a) the number of children placed out of state;

(b) the reasons each child was placed out of state;

(c) the costs for each child placed out of state;

(d) the ~~efforts the department made~~ *process used* to avoid out-of-state placements~~, including:~~

~~(i) the number of in-state providers the department contacted about developing service alternatives for a child in or at risk of being placed in an out-of-state facility;~~

~~(ii) whether any in-state providers submitted a plan for service alternatives for the child to the department; and~~

~~(iii) if a plan for service alternatives was submitted, the reasons the plan was not implemented and the out-of-state placement was determined to be necessary;~~

~~(e) the number of children for whom plans for service alternatives were developed, implemented, and resulted in the return of a child from an out-of-state placement or prevented a child from being placed out of state; and~~

~~(f) other planning efforts to prepare for a child's return to the state.~~*; and*

(e) the number of in-state providers participating in the pool.

(2) For children whose placement is funded in whole or in part by medicaid, the report shall include information indicating other department programs with which the child is involved.

~~(2)~~*(3)* On an ongoing basis, the department shall attempt to reduce out-of-state placements.

~~(3)~~*(4)* The department shall report biannually to the children, families, health, and human services interim committee concerning the information it

has collected under this section and the results of the efforts it has made to reduce out-of-state placements."

Approved May 12, 2011

CHAPTER NO. 378

[HB 621]

AN ACT REVISING LAWS RELATED TO THE PREVENTION AND CONTROL OF AQUATIC INVASIVE SPECIES IN MONTANA; REVISING THE MONTANA AQUATIC INVASIVE SPECIES ACT; AUTHORIZING COLLABORATION WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ELIMINATING THE COORDINATING AUTHORITY; AUTHORIZING THE USE OF QUARANTINE MEASURES IN AN INVASIVE SPECIES MANAGEMENT AREA; APPROPRIATING FUNDS FROM THE STATE GENERAL FUND; AMENDING SECTIONS 80-7-1002, 80-7-1003, 80-7-1005, 80-7-1006, 80-7-1007, 80-7-1008, AND 80-7-1011, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-1002, MCA, is amended to read:

"80-7-1002. Legislative findings and purpose. (1) The legislature finds that:

(a) invasive species can wreak damage on the economy, environment, recreational opportunities, and human health in Montana;

(b) there is reason to be concerned about the further introduction, importation, and infestation of Eurasian watermilfoil (Myriophyllum spicatum) and the introduction, importation, and infestation of additional invasive species ~~not yet present~~ in Montana, such as the zebra mussel (Dreissena polymorpha) and the quagga mussel (Dreissena bugensis), that could cause catastrophic damage to not only our waterways, rivers, and lakes, our water storage, delivery, and irrigation systems, our hydroelectric power structures and systems, and our aquatic ecosystems, but also to the entire state economy;

(c) as infestations of threatening invasive species move ever closer to Montana's borders, protecting Montana against these species is of utmost importance to the state economy, environment, recreational opportunities, and human health for the benefit of all Montanans;

(d) preventing the introduction, importation, and infestation of invasive species is the most effective and least costly strategy for combating invasive species that, once established, are often difficult to control or eradicate;

(e) the use of check stations, at which ~~the exterior of~~ vessels *and trailers transporting vessels* may be inspected for the presence of invasive species and cleaned if an invasive species is detected, is an effective way to prevent the introduction, importation, and infestation of invasive species that are easily transferred from infested areas to uninfested areas when proper precautions are not taken; and

(f) preventing the introduction, importation, and infestation of invasive species is best accomplished through coordinated educational and management activities.

(2) The purpose of this part is to establish a mechanism for Montana to take concerted action to detect, control, and manage invasive species, including preventing further introduction, importation, and infestation, by educating the

public about the threat of these species, coordinating public and private efforts and expertise to combat these species, and authorizing the use of check stations to prevent the intrastate movement of invasive species from infested areas to uninfested areas to protect the state's economy, environment, recreational opportunities, and human health for the benefit of all Montanans."

Section 2. Section 80-7-1003, MCA, is amended to read:

"80-7-1003. Definitions. As used in this part, the following definitions apply:

(1) "Departments" means the department of agriculture, ~~and~~ the department of fish, wildlife, and parks*, and the department of natural resources and conservation*.

(2) "Invasive species" means, upon the mutual agreement of the directors of the departments, ~~of agriculture and fish, wildlife, and parks,~~ a nonnative, aquatic species that has caused, is causing, or is likely to cause harm to the economy, environment, recreational opportunities, or human health.

(3) "Invasive species management area" means a designation made by a department for a specific area~~,~~ *or* for a body or bodies of water~~, or for the entire state~~ for a specific or indeterminate amount of time that regulates invasive species or potential carriers of invasive species within the boundaries of that area.

(4) "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character.

(5) "Vessel" has the meaning provided in 61-1-101."

Section 3. Section 80-7-1005, MCA, is amended to read:

"80-7-1005. Cooperative agreement for invasive species detection and control. (1) In order to implement, administer, and accomplish the purposes of this part, the departments, collectively or individually, shall enter into a cooperative agreement with each other or may enter into an agreement with any person with the appropriate expertise and administrative capacity to perform the obligations of the agreement.

(2) Prior to entering an agreement with a person other than a department, the departments shall work in collaboration with each other to coordinate their respective responsibilities in order to further the purposes of this part.

(3) A cooperative agreement may include provisions for funding to implement the agreement.

~~(4) The overall coordinating authority is the department of agriculture.~~"

Section 4. Section 80-7-1006, MCA, is amended to read:

"80-7-1006. Departmental responsibilities. (1) The departments shall prepare a list of invasive species and identify those departments and other public agencies with jurisdiction over each species on the list. The jurisdiction of each department for the prevention and control of invasive species is according to the department's powers and duties as established by law.

(2) For those invasive species under the jurisdiction of more than one department, the departments with jurisdiction, through cooperative agreement, shall seek to clarify and coordinate their respective responsibilities.

(3) Working in collaboration with each other, the departments, individually or collectively, shall develop and adopt an invasive species strategic plan or plans to accomplish the purposes of this part. The plan or plans shall identify

and prioritize threats and determine appropriate actions, in the following order of priority, related to:

(a) public awareness and education;

(b) prevention and detection of invasive species, including the use of invasive species management areas authorized under 80-7-1008;

(c) management, control, and restoration of infested areas; and

(d) emergency response.

(4) The departments may enforce quarantine regulations and measures imposed by law or rule in an invasive species management area, including the mandatory inspection of any interior portion of a vessel that may contain water for the presence of an invasive species.

~~(4)~~*(5)* The departments shall implement education and outreach programs that increase public knowledge and understanding of prevention, early detection, and control of invasive species."

Section 5. Section 80-7-1007, MCA, is amended to read:

"80-7-1007. Rulemaking authority. Unless otherwise provided in Title 81, chapters 2 and 7, or this chapter, each of the departments may adopt rules for the prevention, early detection, and control of invasive species under the departments' jurisdiction, including rules for the:

(1) implementation of ~~an~~ *the* invasive species strategic plan *adopted pursuant to 80-7-1006*;

(2) transportation of an invasive species or any agent likely to be a carrier of an invasive species;

(3) designation, regulation, and treatment of an invasive species management area, including rules pertaining to*:*

(a) the use of quarantine regulations and measures;

(b) the movement of vessels within, to, or from the area*;* and

(c) the inspection and cleaning of ~~the exterior of~~ vessels moving within, to, or from the area; and

(4) manner in which vessels, including bilges, livewells, bait containers, and other boating-related equipment, traveling in the state must be cleaned to ensure that they are free from the presence of an invasive species."

Section 6. Section 80-7-1008, MCA, is amended to read:

"80-7-1008. Invasive species management area — authorization. (1) When an invasive species is identified as infesting or threatening an area, the department with jurisdiction over that invasive species may designate and administer an invasive species management area for a specific area of land~~,~~ *or* for a body or bodies of water~~, or for the entire state~~ for a specific or indeterminate amount of time to prevent and control the infestation or spread of that invasive species.

(2) To the extent practicable, prior to the designation of an invasive species management area, the department making the designation shall coordinate with all of the departments in order to further the purposes of this part.

(3) The designation of an invasive species management area must specify:

(a) the invasive species present or considered threatening; and

(b) ~~(i) subject to subsection (3)(b)(ii),~~ the method or methods for preventing the introduction of the species or controlling or eradicating the species, including regulations pertaining to*:*

(i) the use of quarantine measures;

(ii) the movement of vessels within, to, and from the area*;* and

(iii) whether check stations will be used to inspect and clean ~~the exterior of~~ vessels moving within, to, or from the area. *A department may conduct mandatory inspections of any interior portion of a vessel that may contain water only if the department has included the use of mandatory inspections as part of quarantine measures established pursuant to subsection (3)(b)(i).*

~~(ii) If the invasive species management area encompasses the entire state, departmental authority to prescribe requirements for cleaning and inspecting the exterior of vessels traveling within the state is limited to those vessels required to stop at a check station pursuant to 80-7-1011(3)(b).~~

(4) As far as practical, signs indicating that an invasive species management area is in place must be posted in an effective manner at access points to the designated area and along the boundaries and within the area. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in 80-7-1004. The departments may coordinate with any other governmental entity for the posting of signs."

Section 7. Section 80-7-1011, MCA, is amended to read:

"80-7-1011. Check stations. (1) The departments shall establish a check station within or adjacent to an invasive species management area to prevent the introduction, importation, infestation, and spread of the invasive species for which the designation was issued.

(2) At a check station, the departments may examine ~~the exterior of~~ vessels *and trailers transporting vessels* for the presence of an invasive species and compliance with regulations imposed under 80-7-1008(3)(b) and with this section. *A department may examine any interior portion of a vessel that may contain water, including bilges, livewells, and bait containers, for compliance only if inspection of interior portions is included as part of quarantine measures established pursuant to 80-7-1008(3)(b)(i).*

(3) ~~(a) Except as provided in subsection (3)(b), the~~ *The* owner, operator, or person in possession of a vessel shall stop at any check station unless a medical emergency makes stopping likely to result in death or serious bodily injury.

~~(b) If a check station is established under regulations pertaining to a statewide invasive species management area, a stop at that check station is required only for a vehicle transporting a vessel, excluding vessels that have never been used.~~

(4) If during an inspection of ~~the exterior of~~ a vessel *or a trailer transporting a vessel* the presence of an invasive species is detected ~~upon the exterior of the vessel~~, that vessel *or trailer* may not leave the check station until it is cleaned and decontaminated in a manner established in accordance with 80-7-1008(3)(b)."

Section 8. Appropriations from state general fund. For the biennium beginning July 1, 2011, there is appropriated:

(1) to the department of agriculture $558,000 from the state general fund for the prevention and control of any nonnative, aquatic invasive species pursuant to Title 80, chapter 7, part 10;

(2) to the department of fish, wildlife, and parks $150,000 from the state general fund for the prevention and control of any nonnative, aquatic invasive species pursuant to Title 80, chapter 7, part 10; and

(3) to the department of natural resources and conservation $190,000 from the state general fund for the prevention and control of aquatic noxious weeds pursuant to Title 80, chapter 7, part 10.

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 379

[HB 641]

AN ACT REVISING THE PROCESS FOR THE REVIEW OF TAX EXPENDITURES; PROVIDING THAT THE DEPARTMENT OF REVENUE IS REQUIRED TO REPORT CERTAIN TAX EXPENDITURES IN THE BIENNIAL REPORT AND MAKE IT AVAILABLE TO THE PUBLIC; ALLOWING A FEE FOR PUBLISHING COSTS OF THE BIENNIAL REPORT; ENCOURAGING A STATEMENT OF PURPOSE IN TAX EXPENDITURE LEGISLATION; AMENDING SECTION 15-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-205, MCA, is amended to read:

"15-1-205. Biennial report — contents. (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature *and the public* a report of the department showing all the taxable property of the state, counties, and cities and its value. The department shall follow the provisions of 5-11-210 in preparing the report *for the legislature*.

(2) The report must also include the statewide average effective tax rate of taxable property in each class of property. The department may determine whether an appropriate effective tax rate may be derived for net proceeds, gross proceeds, agricultural land, and forest land.

(3) The report or supplements to the report ~~may~~ *must* also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law~~.~~*;*

(d) the year of enactment and provision of the Montana Code Annotated granting the tax benefits in subsection (3)(a); and

(e) the number of taxpayers benefiting from each of the tax provisions listed in subsection (3)(a).

(4) ~~The~~ *A distributional analysis of the* data described in subsection (3)~~, if reported,~~ must be related to the income *level* and age of the taxpayer whenever the information is available.

(5) (a) When reporting the data described in subsection (3)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(6) In reporting the data described in subsection (3), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(7) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(8) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(9) The department shall provide an internet version of the report free of charge to the public and shall charge a fee for paper copies that is commensurate with the cost of printing the report."

Section 2. Tax expenditure criteria — legislation. (1) The legislature recognizes the value of relevant information when making determinations regarding tax policy and tax expenditures. The legislature also recognizes the need to reevaluate tax expenditures after enactment. In consideration of these policy goals, the legislature encourages a policy of providing an explicit purpose of a tax expenditure and termination dates of no more than 6 years in any legislation creating, expanding, or continuing a tax expenditure.

(2) As used in this section, the term "tax expenditures" means those revenue losses attributable to provisions of Montana tax laws that allow a special exclusion, exemption, or deduction from gross income or that provide a special credit, a preferential rate of tax, or a deferral of tax liability including:

(a) personal income and corporation license tax exemptions;

(b) property tax exemptions for which application to the department is necessary;

(c) deferral of income;

(d) credits allowed against Montana personal income tax or Montana corporation license tax;

(e) deductions from income; and

(f) any other identifiable preferential treatment of income or property.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 5, chapter 4, part 1, and the provisions of Title 5, chapter 4, part 1, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 380

[HB 642]

AN ACT PROVIDING FOR A SELECT COMMITTEE ON EFFICIENCY IN GOVERNMENT; PROVIDING FOR MEMBERSHIP AND DUTIES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Select committee on efficiency in government — membership. (1) There is a select committee on efficiency in government.

(2) The committee is composed of 12 members appointed as follows:

(a) six members of the house of representatives, three of whom must be appointed by the speaker of the house and three of whom must be appointed by the minority leader; and

(b) six members of the senate, three of whom must be appointed by the president and three of whom must be appointed by the minority leader.

(3) The president of the senate shall designate one of the members as the presiding officer of the committee. The committee may elect any other officers it considers to be advisable.

(4) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

(5) The legislative services division shall provide staff assistance to the committee, and the committee may receive staff assistance from the legislative fiscal division, the legislative audit division, and the office of budget and program planning. Agencies of the executive branch, including the Montana university system, and the judicial branch shall provide information upon request. The committee may contract with other entities as necessary to obtain adequate and necessary information and analysis and may request specific audits from the legislative audit committee.

Section 2. Committee duties — evaluation of priority budgeting systems — reporting. (1) The committee shall:

(a) identify states that have implemented a priority budgeting system;

(b) analyze the approaches taken by the states identified to implement a priority budgeting system, the types of performance measurement used by the states, how decision matrices are developed and implemented to set priorities, and the results experienced;

(c) document long-term issues that will affect Montana's budget in the future, including federal mandates, the potential of less federal funding, and the implications of funding public employee retirement plans and other obligations owed by the state;

(d) in the context of anticipated, long-term pressures on the state budget, investigate and document the advantages of the several states' priority budgeting systems as compared to the baseline budgeting system used by Montana pursuant to Title 17, chapter 7;

(e) focus its attention on ascertaining the efficiency and effectiveness of state activities in three general areas, as provided in subsection (2).

(2) The study must attempt to determine areas of efficiency and effectiveness in the following areas:

(a) health care, particularly matters of access, delivery, and affordability. Concepts for consideration include but are not limited to:

(i) the objective measurement and value of the Washington, Wyoming, Alaska, Montana, and Idaho (WWAMI) and the western interstate commission for higher education programs and an examination of ways to increase the number of Montana medical students returning to Montana to practice medicine;

(ii) the identification of the core programs within the department of public health and human services that need to be prioritized and funded;

(iii) the development of a strategy to address the financial and provider implications posed by the significant increase (nearly doubling) in medicaid rolls that is projected to occur by 2017;

(iv) options for leveraging large information technology system replacements, such as the supplemental nutritional assistance program (SNAP), temporary assistance for needy families (TANF), and the medicaid management information system (MMIS), within the department of public health and human services to make interaction among government agencies, providers, and beneficiaries more seamless and to ensure that proper mechanisms are in place to reduce or eliminate fraud, waste, and abuse;

(v) current regulatory requirements affecting health care providers and consumers, including identifying areas in which regulatory requirements can be modified to reduce their burden;

(vi) a review of statutes that address the licensing of health care professionals to ensure that the licensing requirements are appropriate for current and future health care work practices; and

(vii) other concepts identified by the committee.

(b) technology, particularly matters of availability, access, development, deployment, use, and integration. Concepts for consideration include but are not limited to:

(i) the elimination of dual data entry by government employees;

(ii) movement toward the concept of a paperless office to the maximum extent possible by eliminating the use and storage of paper;

(iii) focusing on increasing internet-based services, including the use of electronic forms, and creating financial incentives for the public to migrate to using internet-based services;

(iv) persuading individuals and entities to be responsible for the accuracy of the information and data that they provide to governmental entities;

(v) ensuring that a cohesive plan exists for the state's information systems to be able to support new technology initiatives, including the increased demand and need for videoconferencing;

(vi) evaluating the use of and, where appropriate, providing for the implementation of new delivery channels, such as the expanded use of the internet and mobile computing with social network tools;

(vii) leveraging Montana's investment in the state's two data centers and related infrastructure;

(viii) the practicality of various private-public partnerships to deliver services and the steps to be taken to enter or complete the partnerships; and

(ix) alternatives by which the concepts outlined in this subsection (2)(b) can be accomplished while preserving the security and integrity of consumer and state data.

(c) natural resources, particularly incentives for and impediments to development, adding value, transporting, and conservation. Concepts for consideration include but are not limited to:

(i) the elimination of redundant regulatory processes;

(ii) the methods and means to facilitate the timely review and authorization of projects, including mitigating postreview and postauthorization administrative or legal challenges;

(iii) alternatives for strengthening the threshold of legal standing for purposes of challenging procedural or substantive permitting decisions;

(iv) options for creating and using electronic forms and authorizations to streamline project startup, reporting, monitoring, continuation, and expansion;

(v) alternatives for implementing accountability in regulatory decisions;

(vi) the establishment of one process leading to the issuance of a permit. The process should include all governmental entities involved in permitting a project and ensure efficient and effective public participation whenever required or advisable.

(vii) the development and implementation of an incentive-based tax system that provides predictability and stability for new and continued growth of natural resource development;

(viii) the potential for new technologies to advance the development of innovative natural resource industries and sectors in Montana; and

(ix) the evaluation of the needs and requirements to facilitate investment and financing of natural resource development projects in Montana.

(3) In order to ensure that state resources are being used effectively and efficiently, the committee may:

(a) evaluate the coordination of projects and programs within the state, including projects and programs that involve the sharing, distribution, or interaction of resources within state government and between state government and federal, tribal, or local jurisdictions;

(b) determine the legislative purpose of specific projects and programs and whether the purpose is being accomplished in an efficient and effective manner. If the committee determines that the legislative purpose is not being accomplished, the committee shall report the basis of the determination and recommend, with proposed legislation, a statutory solution to achieve the legislative purpose or terminate the project or program.

(c) determine the adequacy of public notice and opportunity for comment and participation in project or program design or administration;

(d) determine the transparency of project or program design and implementation;

(e) evaluate the implementation and integrity of projects and programs;

(f) determine the extent to which duplication and waste is prevented under current law and administration and recommend, through proposed legislation, how to further prevent or eliminate duplication and waste; and

(g) within the context of efficiency and effectiveness and as determined to be advisable by the committee, examine other state matters of project or program design, implementation, or administration.

(4) At its first meeting, the committee shall establish its mission, goals, and objectives and specific problems to be addressed. The committee shall also establish a work plan and maintain a website to foster and ensure participation, accountability, and transparency. The website must:

(a) list the committee membership and contact information and the committee's stated mission, goals, and objectives;

(b) include a calendar of committee activities, including meeting dates, times, and venues;

(c) identify the projects and programs under committee examination;

(d) provide or provide a link to relevant economic, financial, demographic, and other information provided to the committee;

(e) establish and maintain links to federal, state, and local government websites that contain information on opportunities for citizen participation and input; and

(f) provide any other information that the committee considers relevant.

(5) (a) The committee shall report to the legislative council, the legislative finance committee, and the legislative audit committee if requested or if considered advisable by the committee.

(b) The committee shall prepare a final report of its findings and conclusions and of its recommendations and shall prepare draft legislation whenever appropriate. The committee shall submit the final report to the governor and the 63rd legislature, as provided in 5-11-210.

Section 3. Appropriation. There is appropriated $100,000 from the general fund to the legislative services division for the biennium beginning July 1, 2011, to support the activities of the select committee on efficiency in government established in [section 1].

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1, 2011.

Section 5. Termination. [This act] terminates December 31, 2012.

Approved May 12, 2011

CHAPTER NO. 381

[SB 166]

AN ACT ALLOWING A TAXPAYER THAT HAS AN INDIVIDUAL INCOME TAX LIABILITY FOR THE CURRENT YEAR OF $200 OR LESS TO PAY THE ENTIRE AMOUNT OF THE TAX DUE, WITHOUT PENALTY OR INTEREST, WHEN FILING AN EXTENDED RETURN; AMENDING SECTIONS 15-1-216 AND 15-30-2604, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-216, MCA, is amended to read:

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments. (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of $50 or the amount of the tax due, whichever is less.

(2) (a) Except as provided in *15-30-2604(2)(c) and* subsection (2)(b) *of this section*, a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 25, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(c) ~~The~~ *Except as provided in 15-30-2604(2)(c), the* penalty imposed under subsection (2)(a) or (2)(b) *of this section* accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than $1,000 or more than $10,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(4) (a) ~~Interest~~ *Except as provided in 15-30-2604(2)(c), interest* on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the conditions of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12%.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. ~~Interest~~ *Except as provided in 15-30-2604(2)(c), interest* accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(5) (a) Except as provided in subsection (5)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and the former 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

(7) ~~Penalty~~ *Except as provided in 15-30-2604, penalty* and interest must be calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i). (Bracketed language in subsection (5)(a) terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)"

Section 2. Section 15-30-2604, MCA, is amended to read:

"15-30-2604. Time for filing — extensions of time. (1) A return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before ~~the 15th day of~~ April *15* following the close of the calendar year. Each return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There must be attached to the return the affidavit or affirmation of the persons making the return to the effect that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve ~~any~~ *the* taxpayer of the obligation to make any return required under this chapter. Each taxpayer liable for a tax under this chapter shall pay a minimum tax of $1.

(2) (a) Subject to subsections (2)(b) and (2)(c), a taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return.

(b) *(i)* ~~On~~ *Except as provided in subsection (2)(c), on* or before the due date of the return, the taxpayer shall pay by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

~~(c)~~*(ii)* The remaining tax, penalty, and interest of the current year's tax liability not paid under subsection (2)(b)*(i)* must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216.

(c) A taxpayer that has a tax liability of $200 or less for the current year may pay the entire amount of the tax, without penalty or interest under 15-1-216, on or before the due date of the return under subsection (2)(a). If the tax is not paid on or before the due date of the return under subsection (2)(a), penalty and interest must be added to the tax due as provided in 15-1-216 from the original due date of the return.

(3) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) ~~The~~ *Except as provided in subsection (2)(c), the* extension of time for filing a return is not an extension of time for the payment of taxes."

Section 3. Applicability. [This act] applies to the tax reporting periods beginning after December 31, 2011.

Approved May 12, 2011

CHAPTER NO. 382

[SB 206]

AN ACT REVISING THE MONTANA MAJOR FACILITY SITING ACT; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO EXAMINE A 1-MILE-WIDE FACILITY SITING CORRIDOR ALONG THE FACILITY ROUTE WHEN CONDUCTING A REVIEW IN ACCORDANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT IN CONJUNCTION WITH AN APPLICATION FOR A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT; EXEMPTING SITING MODIFICATIONS WITHIN THE FACILITY SITING CORRIDOR FROM TITLE 75, CHAPTER 1, PART 2; REQUIRING FACILITIES TO BE SITED IN FEDERALLY DESIGNATED ENERGY CORRIDORS WHEN COMPATIBLE WITH OTHER SITING AND RELIABILITY REQUIREMENTS; AMENDING

SECTIONS 75-20-104, 75-20-301, AND 75-20-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility or biomass generation facility, as defined in 15-6-157, to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern,

state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

(11) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(12) "Transmission reliability agencies" means the federal energy regulatory commission, the western electricity coordinating council, the national electric reliability council, and the Midwest reliability organization.

~~(12)~~*(13)* "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures; or

(d) changing structure spacing, design, or guying.

~~(13)~~*(14)* "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of department — findings necessary for certification. (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(8)(a) and (8)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;

(f) that the facility will serve the public interest, convenience, and necessity;

(g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(h) that the use of public lands *or federally designated energy corridors* for location of ~~the~~ *a* facility *defined in 75-20-104(8)(a) or (8)(b)* was evaluated and

public lands *or federally designated energy corridors for that facility* were selected whenever their use ~~is as economically practicable as the use of private lands~~ *was compatible with:*

(i) the requirements of subsections (1)(a) through (1)(g); and

(ii) transmission line reliability criteria established by transmission reliability agencies for a facility defined in 75-20-104(8)(a).

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(8)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; and

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in:

(i) a violation of a law or standard that protects the environment; or

(ii) a violation of a law or standard that protects the public health and safety.

(4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section, it shall deny the certificate."

Section 3. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104(8)(a) that is more than 30 miles in length and for a facility defined in 75-20-104(8)(b), construction must be completed within 10 years.

(ii) For a facility as defined in 75-20-104(8)(a) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in 75-20-104(8)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

(d) Construction may begin immediately upon issuance of a certificate unless the department finds that there is substantial and convincing evidence that a delay in the commencement of construction is necessary and should be established for a particular facility.

(5) (a) For a facility defined in 75-20-104(8)(a) and (8)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a 1-mile-wide facility siting corridor along the facility route.

(b) The department shall site a corridor of at least 500 feet in width for the facility within the 1-mile-wide corridor in accordance with 75-20-301.

(c) If the certificate holder complies with subsection (6), a certificate holder may modify the siting of the facility within the 1-mile-wide corridor without complying with the provisions of 75-20-219 if the alternate siting is done in a manner that minimizes the impact on residential areas, crop land, and sensitive sites.

(6) (a) A certificate holder may submit an adjustment of the location of a facility outside the corridor designated pursuant to subsection (5) to the department. The adjustment must be accompanied by the written agreement of the affected property owner and all contiguous property owners that would be affected. The submission must include a map showing the approved facility location and the proposed adjustment.

(b) The certificate holder may construct the facility as described in the submission unless the department notifies the certificate holder within 15 days of the submission that the department has determined that:

(i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the department would have selected a different location for the facility; or

(ii) the adjustment would materially increase unmitigated adverse impacts.

(c) Siting of a facility within the corridor designated pursuant to subsection (5) or an adjustment pursuant to subsection (6)(a) is not subject to:

(i) Title 75, chapter 1, part 2;

(ii) a certificate amendment under 75-20-219; or

(iii) a board review under 75-20-223."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to applications for a certificate under the Major Facility Siting Act filed on or after [the effective date of this act].

Approved May 12, 2011

CHAPTER NO. 383

[SB 212]

AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO MANAGE WILD BUFFALO OR BISON; REQUIRING A MANAGEMENT PLAN BEFORE WILD BUFFALO OR BISON MAY BE RELEASED OR TRANSPLANTED ONTO PRIVATE OR PUBLIC LAND; AMENDING SECTION 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-216, MCA, is amended to read:

"87-1-216. Wild buffalo or bison as species in need of management — policy — department duties. (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

(a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a species requiring disease control;

(b) to designate other wild buffalo or bison as a species in need of management; and

(c) to set out specific duties for the department for management of the species.

(2) The department:

(a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison in this state that have not been exposed to or infected with a dangerous or contagious disease but may threaten persons or property;

(b) shall consult and coordinate with the department of livestock on implementation of the provisions of subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease-free; and

(c) shall cooperate with the department of livestock in managing publicly owned wild buffalo or bison that enter the state on public or private land from a herd that is infected with a dangerous disease, as provided in 81-2-120, under a plan approved by the governor. The department of livestock is authorized under the provisions of 81-2-120 to regulate publicly owned wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease. The department may, after agreement and authorization by the department of livestock, authorize the public hunting of wild buffalo or bison that have been exposed to or infected with a contagious disease, pursuant to 87-2-730. *The department may, following consultation with*

the department of livestock, adopt rules to authorize the taking of bison where and when necessary to prevent the transmission of a contagious disease.

~~(3) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to person or property.~~

(3) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to person or property.

(4) The department may not release, transplant, or allow wild buffalo or bison on any private or public land in Montana that has not been authorized for that use by the private or public owner.

(5) Subject to subsection (4), the department shall develop and adopt a management plan before any wild buffalo or bison under the department's jurisdiction may be released or transplanted onto private or public land in Montana. A plan must include but is not limited to:

(a) measures to comply with any applicable animal health protocol required under Title 81, under subsection (2)(b), or by the state veterinarian;

(b) any animal identification and tracking protocol required by the department of livestock to identify the origin and track the movement of wild buffalo or bison for the purposes of subsections (2)(b) and (5)(c);

(c) animal containment measures that ensure that any animal transplanted or released on private or public land will be contained in designated areas. Containment measures must include but are not limited to:

(i) any fencing required;

(ii) contingency plans to expeditiously relocate wild buffalo or bison that enter private or public property where the presence of the animals is not authorized by the private or public owner;

(iii) contingency plans to expeditiously fund and construct more effective containment measures in the event of an escape; and

(iv) contingency plans to eliminate or decrease the size of designated areas, including the expeditious relocation of wild buffalo or bison if the department is unable to effectively manage or contain the wild buffalo or bison.

(d) a reasonable means of protecting public safety and emergency measures to be implemented if public safety may be threatened;

(e) a reasonable maximum carrying capacity for any proposed designated area using sound management principles, including but not limited to forage-based carrying capacity, and methods for not exceeding that carrying capacity; and

(f) identification of long-term, stable funding sources that would be dedicated to implementing the provisions of the management plan for each designated area.

(6) When developing a management plan in accordance with subsection (5), the department shall provide the opportunity for public comment and hold a public hearing in the affected county or counties. Prior to making a decision to release or transplant wild buffalo or bison onto private or public land in Montana, the department shall respond to all public comment received and publish a full record of the proceedings at any public hearing.

(7) The department is liable for all costs incurred, including costs arising from protecting public safety, and any damage to private property that occurs as a result of the department's failure to meet the requirements of subsection (5).

~~(4)~~*(8)* When adopting and implementing rules regarding the special wild buffalo or bison license issued pursuant to 87-2-730, the department shall consult and cooperate with the department of livestock regarding when and where public hunting may be allowed and the safe handling of wild buffalo or bison parts in order to minimize the potential for spreading any contagious disease to persons or to livestock."

Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 12, 2011

CHAPTER NO. 384

[SB 279]

AN ACT PROVIDING AN EXCEPTION TO THE OFFENSE OF CARRYING A CONCEALED WEAPON FOR LEGISLATIVE SECURITY STAFF IN THE STATE CAPITOL WHO HAVE BEEN ISSUED A CONCEALED WEAPON PERMIT; PROVIDING THAT A LOCAL ORDINANCE MAY NOT PROHIBIT LEGISLATIVE SECURITY STAFF WITH A CONCEALED WEAPON PERMIT FROM CARRYING A CONCEALED WEAPON IN THE STATE CAPITOL; AND AMENDING SECTIONS 45-8-317, 45-8-328, AND 45-8-351, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-317, MCA, is amended to read:

"45-8-317. Exceptions. (1) Section 45-8-316 does not apply to:

(a) any peace officer of the state of Montana or of another state who has the power to make arrests;

(b) any officer of the United States government authorized to carry a concealed weapon;

(c) a person in actual service as a member of the national guard;

(d) a person summoned to the aid of any of the persons named in subsections (1)(a) through (1)(c);

(e) a civil officer or the officer's deputy engaged in the discharge of official business;

(f) a probation and parole officer authorized to carry a firearm under 46-23-1002;

(g) a person issued a permit under 45-8-321 or a person with a permit recognized under 45-8-329;

(h) an agent of the department of justice or a criminal investigator in a county attorney's office;

(i) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; ~~or~~

(j) the carrying of arms on one's own premises or at one's home or place of business*; or*

(k) the carrying of a concealed weapon in the state capitol by a legislative security officer who has been issued a permit under 45-8-321 or with a permit recognized under 45-8-329.

(2) With regard to a person issued a permit under 45-8-321, the provisions of 45-8-328 do not apply to this section."

Section 2. Section 45-8-328, MCA, is amended to read:

"45-8-328. Carrying concealed weapon in prohibited place — penalty. (1) ~~A~~ *Except for legislative security officers authorized to carry a concealed weapon in the state capitol as provided in 45-8-317(1)(k), a* person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in:

(a) portions of a building used for state or local government offices and related areas in the building that have been restricted;

(b) a bank, credit union, savings and loan institution, or similar institution during the institution's normal business hours. It is not an offense under this section to carry a concealed weapon while:

(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both."

Section 3. Section 45-8-351, MCA, is amended to read:

"45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), ~~no~~ *a* county, city, town, consolidated local government, or other local government unit may *not* prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained ~~herein shall allow~~ *in this section allows* any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others~~, nor shall anything contained herein~~ *or to* prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317."

Approved May 12, 2011

CHAPTER NO. 385

[SB 305]

AN ACT REVISING MONTANA'S ENERGY POLICY; AMENDING SECTION 90-4-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-1001, MCA, is amended to read:

"90-4-1001. State energy policy goal ~~statement~~ *statements.* (1) It is the policy of the state of Montana to*:*

(a) promote energy efficiency, conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens~~.~~*;*

(b) enhance existing energy development and create new diversified energy development from all of Montana's abundant energy resources;

(c) promote development of projects using advanced technologies that convert coal into electricity, synthetic petroleum products, hydrogen, methane, natural gas, and chemical feedstocks;

(d) increase utilization of Montana's vast coal reserves in an environmentally sound manner that includes the mitigation of greenhouse gas and other emissions;

(e) increase local oil and gas exploration and development to provide high-paying jobs and to strengthen Montana's economy;

(f) expand exploration and technological innovation, including using carbon dioxide for enhanced oil recovery in declining oil fields to increase output;

(g) expand Montana's petroleum refining industry as a significant contributor to Montana's manufacturing sector in supplying the transportation energy needs of Montana and the region;

(h) develop biomass plants to generate heat for industrial use, electricity, or both, and as a means to manage Montana's forests;

(i) promote the generation of low-cost electricity with large-scale utility wind generation and small-scale distributed generation;

(j) build new transmission lines in the state, while noting that the need for new transmission lines may be mitigated by focusing on energy efficiency, distributed energy, demand response, and smart grid technologies;

(k) increase the capacity of existing transmission lines in existing corridors and maximize the potential of existing transmission lines;

(l) develop new transmission lines, pipelines, and other energy infrastructure in Montana by working closely with all affected stakeholders, including local governments, in the preliminary stages of development;

(m) address the interests of property owners and property rights as soon as practicable when developing a project to provide time to consider a variety of options as easements are secured;

(n) ensure that the costs of transmission lines that allow for the export of Montana-generated electricity are borne by those who will benefit from the lines in order to protect Montana's ratepayers from the costs of serving others;

(o) strengthen Montana's level of participation in regional transmission efforts and organizations, recognizing that endeavors to improve the management of the transmission grid often require a broad, regional approach;

(p) use new and innovative technologies, such as compressed air energy storage, batteries, flywheels, hydrogen production, smart grid, smart garage, and intrahour balancing services to address wind integration;

(q) utilize modeling and high-capacity computer technology to quantify the benefits of geographic diversity and for regional planning in the siting of future wind development facilities in order to optimize usable power generation and mitigate firming needs;

(r) review potential impacts to landscapes, wildlife, and existing land uses, including recreation and agriculture when developing wind generation;

(s) develop contracts between qualifying small power production facilities, as defined in 69-3-601, and utilities, which facilitate the development of small power production facilities by identifying fair and reasonable costs for integration of their power;

(t) monitor existing energy incentives to determine if they are cost-effective, noting that incentives are a temporary tool to implement and promote:

(i) new technologies;

(ii) new fuel sources;

(iii) efficiency and conservation; and

(iv) energy diversity;

(u) enhance Montana's overall management responsibilities, both fiduciary and multiple-use, pursuant to The Enabling Act of the state of Montana, Article X of the Montana constitution, and Title 7, chapter 1, in pursuing energy development on state lands;

(v) develop and use best management practices for energy development on state lands;

(w) develop and emphasize building performance standards for efficiency as an alternative to prescriptive standards in order to encourage innovations that may result in more comfort for the property owner and less energy use at a lower cost; and

(x) ensure that adequate amounts of the electrical energy produced at the lowest cost in this state are reserved for Montana's families, businesses, and industries.

(2) In pursuing ~~this goal~~ *these goal statements*, it is the policy of the state of Montana to:

(a) ~~recognize~~ *consider* that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets;

(b) develop Montana's existing and new, diversified energy resources to provide low-cost electricity, gas, and liquid fuels needed to drive economic growth and self sufficiency;

(c) reduce the nation's reliance on foreign oil that often comes from unfriendly countries around the world;

~~(b)~~*(d)* ~~review this~~ *consider reviewing these* energy policy ~~statement~~ *statements* and any future changes pursuant to 90-4-1003 so that Montana's energy strategy will provide for a balance between a sustainable environment and a viable economy; ~~and~~

~~(c)~~*(e)* adopt a state transportation energy policy as provided in 90-4-1010 and an alternative fuels policy and implementing guidelines as provided in 90-4-1011*; and*

(f) consider revisions to the state transportation energy policy and the alternative fuels policy and implementing guidelines, if necessary."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 12, 2011

CHAPTER NO. 386

[SB 338]

AN ACT PROVIDING RESTRICTIONS FOR STATE OFFICERS WITH REGARD TO PUBLIC SERVICE ANNOUNCEMENTS; PROVIDING A PENALTY; PROVIDING FOR REPORTING ON THE EXPENDITURE OF STATE FUNDS FOR PUBLIC SERVICE ANNOUNCEMENTS; AND AMENDING SECTIONS 2-2-121, 2-2-136, AND 17-2-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) *(a)* A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 2. Section 2-2-136, MCA, is amended to read:

"2-2-136. Enforcement for state officers, legislators, and state employees — referral of complaint involving county attorney. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(2) *(a)* ~~If~~ *Except as provided in subsection (2)(b), if* the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than $50 or more than $1,000~~, and if~~.

(b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than $500 or more than $10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee.

The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

Section 3. Section 17-2-304, MCA, is amended to read:

"17-2-304. Reports required. (1) The approving authority for a state agency shall annually report in writing to the legislative finance committee by September 15:

(a) each state agency that had a cash balance in a state charge for services fund contrary to the limitation provided in 17-2-302(1) during the previous 12 months;

(b) the facts certified for each state agency by the approving authority pursuant to 17-2-302(2);

(c) each state agency that has complied with the requirements of 17-2-303 and the circumstances of the agency's compliance; ~~and~~

(d) each state agency that has not complied with 17-2-303 and the circumstances of the agency's noncompliance*; and*

(e) all expenditures made by the state agency in the preceding 12 months that are related to the production and distribution of public service announcements.

(2) The director of the department of administration shall report to the legislature at the time and in the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge for services fund contrary to the limitation provided by 17-2-302(1) or that failed to reduce the charge as provided in 17-2-303, or both, during the previous 12 months."

Approved May 12, 2011

CHAPTER NO. 387

[HB 5]

AN ACT GENERALLY REVISING LAWS RELATING TO CAPITAL PROJECTS; APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2013; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE LONG-RANGE BUILDING PROGRAM ACCOUNT TO THE STATE GENERAL FUND; REVISING REQUIREMENTS FOR CIGARETTE TAX REVENUE; AMENDING SECTION 17-7-205, MCA; AMENDING SECTION 2, CHAPTER 3, SPECIAL LAWS OF MAY 2007, SECTION 2, CHAPTER 478, LAWS OF 2009, AND SECTION 6, CHAPTER 478, LAWS OF 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 12], unless otherwise stated, the following definitions apply:

(1) "Authority only" means approval provided by the legislature to expend money that does not require an appropriation, including grants, donations, auxiliary funds, proprietary funds, and university funds.

(2) "Capital project" means the acquisition of land or improvements or the planning, capital construction, environmental cleanup, renovation, software development, furnishing, or major repair projects authorized in [sections 1 through 12].

(3) "LRBP" means the long-range building program account in the capital projects fund type.

(4) "Other funding sources" means money other than LRBP, state special revenue fund, or federal special revenue money that accrues to an agency under the provisions of law.

Section 2. Capital projects appropriations and authorizations. The following money is appropriated to the department of administration for the indicated capital projects from the indicated sources. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
DEPARTMENT OF ADMINISTRATION						
Install Fire Protection Systems, Montana Law Enforcement Academy	600,000					600,000
Elevator and ADA Modifications, Capitol Complex		800,000				800,000
Mechanical and Energy Projects, Capitol Complex		1,592,500				1,592,500
Spending Authority, Utility Energy Conservation Funds					1,000,000	1,000,000
Authority-only funds consist of utility company energy conservation funds.						
Authority to Spend Federal Grant Funds			5,000,000			5,000,000

DEPARTMENT OF CORRECTIONS				
Repair Building 15 Roof, Riverside Youth Correctional Facility, Boulder				
	215,000			215,000
DEPARTMENT OF FISH, WILDLIFE, AND PARKS				
Hatchery Maintenance	575,000	575,000		1,150,000
Administrative Facilities Repair and Maintenance				
	1,570,500			1,570,500
DEPARTMENT OF MILITARY AFFAIRS				
Replace Armory Roofs, Statewide		930,000		930,000
MONTANA UNIVERSITIES AND COLLEGES				
Install Fire Protection Systems, Montana University System				
	530,000		260,000	790,000
Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.				
Hazard Mitigation Projects, Montana University System				
	875,000	2,850,000	1,075,000	4,800,000
Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.				
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES				
Replace Security Key System - Montana Developmental Center, Boulder				
	200,000			200,000
Preliminary Design - SW Montana Veterans' Home, Butte				
	475,000			475,000
Repair Natural Gas Distribution System, Montana State Hospital, Warm Springs				
	250,000			250,000
DEPARTMENT OF TRANSPORTATION				
Equipment Storage Buildings, Statewide				
	2,158,000			2,158,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION				
Aircraft Hangar, Kalispell			250,000	250,000
Other funds consist of proprietary funds.				

Section 3. Capital improvements. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Parks Program		2,351,000	1,700,000			4,051,000
Future Fisheries		1,274,000				1,274,000
FAS Site Protection		1,474,000	400,000			1,874,000
Upland Game Bird Program		1,181,800				1,181,800
Grant Programs/Federal Projects		258,000	2,000,000			2,258,000
Milltown Dam Park Improvements		927,530	730,500			1,658,030
Wildlife Habitat Maintenance		970,000				970,000
Dam Maintenance		50,000				50,000
Smith River Corridor Enhancements		150,000				150,000
Waterfowl Program		509,000				509,000
Community Fishing Ponds		50,000				50,000

If House Bill No. 316 is not passed and approved or if House Bill No. 316 is passed and approved in a form that retains the $500,000 allocation to the department of fish, wildlife, and parks in 15-38-202 for the purposes of 87-1-283, then $1,000,000 of the state special revenue appropriation for Future Fisheries is appropriated from the allocation provided for in 15-38-202.

If House Bill No. 209 is passed and approved and if House Bill No. 209 amends 87-1-242(3) and (4) by allocating 50% of the money to secure wildlife habitat pursuant to 87-1-209 and 50% of the money to the maintenance account established in 87-1-230, then the state special revenue appropriation for Wildlife Habitat Maintenance is increased by $830,000.

(2) Authority is being granted to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities. Authority-only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by the university of Montana from nonstate sources:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
General Spending Authority, UM-All Campuses					6,000,000	6,000,000

(3) Authority is being granted to Montana state university in the indicated amount for the purpose of making capital improvements to campus facilities. Authority-only funds may include federal special revenue, donations, grants, and higher education funds. All costs for the operations and maintenance of any new improvements constructed under this authorization must be paid by Montana state university from nonstate sources:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
General Spending Authority, MSU-All Campuses					6,000,000	6,000,000

(4) The following money is appropriated to the department of military affairs in the indicated amount for the purpose of making capital improvements to statewide facilities. All costs for the operation and maintenance of any new improvements constructed with these funds must be paid by the department of military affairs from nonstate sources:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Federal Spending Authority			2,500,000			2,500,000

(5) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements as indicated:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Statewide Maintenance, Repair, and Small Projects		2,142,000				2,142,000

Section 4. Land acquisition appropriation. The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreements:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Habitat Montana		8,668,000	200,000			8,868,000
Fishing Access Site Acquisition		279,000				279,000
Bighorn Sheep Habitat		538,000				538,000
Home to Hunt Access		600,000				600,000

If House Bill No. 209 is passed and approved and if House Bill No. 209 amends 87-1-242(3) and (4) by allocating 50% of the money to secure wildlife habitat pursuant to 87-1-209 and 50% of the money to the maintenance account established in 87-1-230, then the state special revenue appropriation for Habitat Montana is decreased by $3,476,160.

The appropriation of state special revenue for Fishing Access Site Acquisition in this section is restricted to purchases of land that are 5 acres or less.

Section 5. Environmental cleanup appropriation. The following money is appropriated to the department of environmental quality in the indicated amount for the restricted purpose of paying Montana's share of the liability associated with the KRY site:

Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
KRY cleanup		5,850,000				5,850,000

~~**Section 6. Legislative branch information technology capital projects appropriation.** (1) There is appropriated to the legislative services division $5,975,000 from the long-range information technology program account in the capital projects fund type for the purpose of software development, consolidation, and replacement of legacy systems, which are responsible for production of the Montana Code Annotated, bills, amendments, journals of the house of representatives and the senate, and legislative minutes.~~

~~(2) Before encumbering any funds appropriated in subsection (1), the legislative services division shall submit a project plan to the legislative branch computer system planning council for approval or disapproval. The legislative branch computer system planning council shall promptly review the plan and, if necessary, make timely recommendations to the legislative services division regarding implementation of the plan.~~

~~(3) The legislative services division shall provide updates to the legislative council regarding the implementation of the capital projects funded under this section.~~

Section 7. Transfer of appropriations. The department of fish, wildlife, and parks and the department of transportation are authorized to transfer the appropriations and authority, as appropriate, in [sections 3 and 4] among the necessary fund types for these projects.

Section 8. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interentity loans in accordance

with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 9. Capital projects — contingent funds. If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the project for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 2 and 3] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2013 biennium long-range building program presented to the 62nd legislature.

Section 10. Review by department of environmental quality. The department of environmental quality shall review capital projects authorized in [section 2] for potential inclusion in the energy conservation program under Title 90, chapter 4, part 6. When a review shows that a capital project will result in energy improvements, that project must be submitted to the energy conservation program for funding consideration. Funding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential funding after the review.

Section 11. Fund transfer. The amount of $11,185,622 must be transferred from the long-range building program account in the capital projects fund type to the state general fund by June 30, 2011.

Section 12. Legislative consent. The appropriations authorized in [sections 1 through 11] constitute legislative consent for the capital projects contained in [sections 1 through 11] within the meaning of 18-2-102.

Section 13. Section 17-7-205, MCA, is amended to read:

"17-7-205. Long-range building program account. (1) There is a long-range building program account in the capital projects fund type.

(2) Cigarette tax revenue *is* deposited in the account pursuant to 16-11-119 ~~must be obligated prior to obligating other funds in the account~~.

(3) Coal severance taxes allocated to the account under 15-35-108 may be appropriated for the long-range building program or debt service payments on building projects. Coal severance taxes required for general obligation bond debt service may be transferred to the debt service fund.

(4) Interest earnings, project carryover funds, administrative fees, and miscellaneous revenue must be retained in the account."

Section 14. Section 2, Chapter 3, Special Laws of May 2007, is amended to read:

"**Section 2. Capital project appropriations and authorizations.** The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations and authority among the necessary fund types for these projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
MONTANA SCHOOL FOR THE DEAF AND BLIND						
Replace Boiler	600,000					600,000
Cottage Improvement					372,000	372,000
Authority only funds consist of federal special revenue, donations, and grants.						
DEPARTMENT OF ADMINISTRATION						
Roof Repairs and Replacements, Statewide	3,000,000	392,160	68,040			3,460,200
Code/Deferred Maintenance Projects, Statewide	2,300,000					2,300,000
Hazardous Materials Abatement, Statewide	500,000					500,000
Code/Deferred Maintenance Projects, Capitol Complex					550,000	550,000
Authority only funds consist of general services division internal service funds.						
Upgrade Fire Protection Systems, Statewide	500,000					500,000
Fire Protection Measures, Capitol Complex					500,000	500,000
Authority only funds consist of general services division internal service funds.						
Upgrade State Environmental Laboratory, Helena	1,000,000		1,000,000			2,000,000
Repair/Preserve Building Envelopes, Statewide	1,500,000					1,500,000
Campus Infrastructure Projects, Statewide	1,000,000					1,000,000
Mechanical System Improvements, Capitol Complex					1,900,000	1,900,000
Authority only funds consist of general services division internal service funds.						
Deferred Maintenance, Phase 2, MT Law Enforcement Academy	500,000					500,000
New Classroom Building, MT Law Enforcement Academy	3,750,000					3,750,000
Enterprise System Services Centers	10,500,000			4,000,000		14,500,000
Other funds consist of capitol land grant funds.						
Campus Master Planning, Statewide	400,000				250,000	650,000
Authority only funds consist of general services division internal service funds.						
Challenge Grant for Super Computer, UM-MT Tech	259,000				7,000,000	7,259,000
Authority only funds may include federal special revenue, donations, grants, and higher education funds.						
DEPARTMENT OF CORRECTIONS						
Housing Unit Upgrades, MT State Prison	1,200,000					1,200,000
Expand Work Dorm, MT State Prison	2,500,000					2,500,000
Expand Food Service Capacity, MT State Prison	~~1,637,000~~ *445,598*				293,000	~~1,930,000~~ *738,598*
Authority only funds consist of proprietary funds.						

DEPARTMENT OF FISH, WILDLIFE, AND PARKS				
Hatchery Maintenance	500,000			500,000
Administrative Facilities Repair and Maintenance	800,000			800,000
DEPARTMENT OF MILITARY AFFAIRS				
Readiness Center, Miles City	2,480,000	7,510,970		9,990,970
Armed Forces Reserve Center, Missoula		30,903,968		30,903,968
Construct Female Showers and Latrines	290,000	290,000		580,000
Montana State Veterans' Cemetery Expansion		1,206,000		1,206,000
Disaster and Emergency Services Mobile Command Post	172,500			172,500
MONTANA UNIVERSITIES AND COLLEGES				
Code Compliance/Deferred Maintenance, MT University System	3,600,000			3,600,000
Systems Improvements, MT-Tech College of Technology	925,000			925,000
Steam Distribution System Upgrades, Phase 2, UM-Missoula	2,000,000		1,000,000	3,000,000
Authority only funds consist of auxiliary funds.				
Renovate Clapp Building, UM-Missoula	821,000			821,000
Renovate Armory Gym, MSU-Northern	400,000		3,250,000	3,650,000
Authority only funds consist of auxiliary funds.				
Renovate Main Hall, UM-Western	4,500,000			4,500,000
Renovate McMullen Hall, MSU-Billings	1,924,500			1,924,500
Stabilize Masonry, MSU-Bozeman	2,600,000			2,600,000
Classroom/Laboratory Upgrades, MT University System	2,000,000			2,000,000
Utility Infrastructure Improvements, MSU-Bozeman	500,000		50,000	550,000
Authority only funds consist of auxiliary funds.				
Supplement UM-Helena College of Technology Expansion	4,500,000		135,000	4,635,000
Authority only funds consist of auxiliary funds.				
Supplement Great Falls College of Technology Addition	3,000,000			3,000,000
Supplement Billings College of Technology Expansion	2,217,000			2,217,000
COT Long-Range Planning, UM-Missoula	500,000			500,000
Auto Tech Center Design, MSU-Northern	~~800,000~~			~~800,000~~
	190,000			*190,000*
Renovate Gaines Hall, MSU-Bozeman	28,500,000			28,500,000

Law School Addition, UM-Missoula

4,200,000 5,050,000 9,250,000

Authority only funds may include federal special revenue, donations, grants, and higher education funds.

Augment Petroleum, Bureau of Mines and Geology, UM-MT Tech

5,200,000 5,200,000

School of Journalism Building, UM-Missoula

500,000 500,000

Increase Authority, Museum of the Rockies, MSU-Bozeman

3,500,000 3,500,000

Authority only funds may include federal special revenue, donations, grants, and higher education funds.

School of Education Building, UM-Missoula

7,500,000 7,500,000

Authority only funds may include federal special revenue, donations, grants, and higher education funds.

New Parking Structure, UM-Missoula

5,000,000 5,000,000

Authority only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

Montana Agricultural Extension Services Research Centers and Farms

5,000,000 1,250,000 6,250,000

Authority is granted to Montana state university in the indicated amounts for the purpose of making capital improvements to the designated facilities.

Authority only funds may include any type of nonstate funding.

Animal Bioscience Facility, MSU-Bozeman

3,570,000 3,570,000

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Receiv. Hospital Renovat., MT State Hospital, Warm Springs

~~5,800,000~~ ~~5,800,000~~

1,300,000 *1,300,000*

Renovate/Improve Support Services, MT State Hospital

4,500,000 4,500,000

MT Mental Health Nursing Care Center Improvements, Lewistown

750,000 750,000

Montana Veterans' Home Improvements

1,413,000 1,413,000

Improve Campus, MT State Hospital, Warm Springs

1,280,000 1,280,000

DEPARTMENT OF TRANSPORTATION

Equipment Storage Buildings, Statewide

2,700,000 2,700,000

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Code/Deferred Maintenance and Small Projects, DNRC Unit Campuses, Statewide

750,000 750,000

Co-locate DNRC/DEQ, Kalispell 3,500,000 3,500,000

Consolidate DNRC Divisions, Missoula

2,000,000 2,000,000

Building Addition, Billings Oil and Gas Office

750,000 750,000

DEPARTMENT OF JUSTICE

Purchase Forensic Science Lab Building

7,250,000 7,250,000"

Section 15. Section 2, Chapter 478, Laws of 2009, is amended to read:

"**Section 2. Capital project appropriations and authorizations.** The following money is appropriated for the indicated capital projects to the department of environmental quality for state building energy conservation funds and from all other indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations and/or authority among the necessary fund types for these projects:

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
MONTANA SCHOOL FOR THE DEAF AND BLIND						
Energy and Facility Improvements	250,000			25,000		275,000
Other funds consist of state building energy conservation funds.						
DEPARTMENT OF ADMINISTRATION						
Renovation and Energy Improvements State Liquor Warehouse						
				2,210,000		2,210,000
Other funds consist of 460,000 of state building energy conservation funds and 1,750,000 of proprietary funds.						
Mechanical and Energy Projects Capitol Complex						
			1,924,000		1,600,000	3,524,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.						
Authority-only funds consist of general services division internal service funds.						
Energy Related Deferred Maintenance, Statewide						
	1,073,568		1,276,432			2,350,000
Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.						
Spending Authority, Utility Energy Conservation Funds						
					2,000,000	2,000,000
Authority-only funds consist of utility company grants, rebates and incentives.						
Hazardous Materials Abatement, Statewide						
	400,000					400,000
Roof Repairs and Replacements, Statewide						
	1,310,000		700,000			2,010,000
Elevator and ADA Modifications, Capitol Complex						
					1,450,000	1,450,000
Authority-only funds consist of general services division internal service funds.						
Repair/Preserve Building Envelopes, Statewide						
	1,500,000					1,500,000
Code/Deferred Maintenance, Statewide						
	1,150,000					1,150,000
Infrastructure Repairs, State Capitol						
	~~500,000~~				300,000	~~800,000~~
						300,000
Authority-only funds consist of general services division internal service funds.						
Parking Lot Upgrades, Capitol Complex						
					250,000	250,000
Authority-only funds consist of general services division internal service funds.						
Upgrade Fire Protection Systems, Statewide						
	800,000					800,000

Campus Master Planning, Statewide

200,000 100,000 200,000 500,000

Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

DEPARTMENT OF CORRECTIONS

Energy Conservation Improvements

1,260,000 2,610,000 10,000 500,000 4,380,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for state energy programs.

Other funds consist of state building energy conservation funds.

Authority-only funds may include federal special revenue, donations, grants, and proprietary funds.

Alternative Energy-Biomass Boiler, MT State Prison

250,000 740,000 990,000

Other funds consist of state building energy conservation funds.

Emergency Power System, MT State Prison

500,000 500,000

Renovate Low Support, MT State Prison

1,660,000 1,660,000

New Building for Youth Transition Center, Great Falls

~~1,310,000~~ ~~1,310,000~~

60,000 *60,000*

Improve Food Production 300,000 300,000

DEPARTMENT OF FISH, WILDLIFE, AND PARKS

Hatchery Maintenance 575,000 275,000 850,000

Administration Facilities Repair and Maintenance

1,390,000 1,390,000

DEPARTMENT OF MILITARY AFFAIRS

Energy Conservation Improvements 885,000 265,000 1,150,000

Other funds consist of state building energy conservation funds.

Storm Water Improvements/Infrastructure, Phase 3, Fort Harrison

1,600,000 1,600,000

Paving Parking Lots, Statewide 100,000 100,000 200,000

MONTANA UNIVERSITIES AND COLLEGES

Code Compliance/Deferred Maintenance Montana University System

3,600,000 1,000,000 4,600,000

Authority-only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

Animal Bioscience Facility, MSU-Bozeman

2,500,000 2,500,000

Renovate Existing Laboratory Facilities, MSU-Bozeman

7,500,000 7,500,000

Authority is hereby granted to Montana state university to convert existing laboratories to long-term use and to make capital improvements in the indicated amount contingent upon receipt of federal special revenue, grants, or both.

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Simulated Hospital and Child Care Center, MSU-Great Falls College of Technology

1,600,000 500,000 2,100,000

Authority only funds may include federal special revenue, auxiliary, donations, grants, and higher education funds.

Funds must be used for construction costs. Any remaining funds will be redirected to construction projects at Montana colleges of technology.

UM-Helena College of Technology Project Completion

850,000 850,000

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES					
Improve Medical Services, MT Developmental Center, Boulder					
	450,000				450,000
DEPARTMENT OF TRANSPORTATION					
Equipment Storage Buildings, Statewide					
		1,175,000			1,175,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION					
Energy/Major Repairs and Small Projects, Statewide					
	1,000,000				1,000,000
Building Addition, Billings Oil and Gas Office					
		1,300,000			1,300,000
DEPARTMENT OF AGRICULTURE					
Renovation and Energy Upgrades, State Grain Lab, Great Falls					
	525,000				525,000"

Section 16. Section 6, Chapter 478, Laws of 2009, is amended to read:

"**Section 6. Montana stimulus capital improvements.** (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration. Funds not requiring legislative appropriation are included for the purpose of authorization. The department of administration is authorized to transfer the appropriations, authority, or both among the necessary fund types for these projects.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Exterior Envelope Improvements, Montana Law Enforcement Academy						
	425,000					425,000
Facility Repairs and Improvements, WATCh East						
	650,000					650,000
Facility Repairs and Improvements, DNRC Swan and Stillwater Units						
	400,000					400,000
Renovate Low Support, Phase 2, Montana State Prison						
	1,240,000					1,240,000
Renovate Main Hall, Phase 2, UM-Western						
	6,000,000					6,000,000
Renovation/Addition to Spratt Building, Montana State Hospital						
	1,640,000					1,640,000
Montana Veterans' Home Improvements, Statewide						
	1,200,000					1,200,000
Consolidate DNRC Divisions, Missoula						
	350,000					350,000
Office of Public Assistance, Wolf Point						
	~~2,250,000~~					~~2,250,000~~
	15,780					*15,780*
~~Statewide Facilities Planning~~	~~400,000~~					~~400,000~~
Central Land Office Building Renovation/Replacement, DNRC						
	1,600,000					1,600,000
Energy Conservation Improvements, Montana University System						
	12,300,000				4,500,000	16,800,000

The highest priority use of funds provided in this appropriation is to augment projects initiated with the state energy program funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and appropriated in [section 4] for the Montana university system to address related modernization, repairs, and renovation costs that the department of administration

considers prudent to construct within the same project. If the federal state energy program funds are exhausted, the remaining funds in this appropriation may be used to entirely fund additional energy conservation projects and related improvements.

Rose Creek Hatchery			5,000,000		5,000,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) The following money is appropriated to the department of military affairs in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization. All costs for the operation and maintenance of any new improvements constructed with these funds must be paid by the department of military affairs with nonstate revenue.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Construct Female Latrines - Department of Military Affairs, Culbertson and Malta						
			451,800			451,800

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for national guard operations and maintenance.

Helicopter Dip Site - Department of Military Affairs, Fort Harrison						
			279,268			279,268

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for national guard operations and maintenance.

Vault Modifications - Department of Military Affairs, Statewide						
			500,000			500,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, for national guard operations and maintenance.

(3) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities. Funds not requiring legislative appropriation are included for the purpose of authorization.

Agency/Project	LRBP Fund	State Special Revenue	Federal Special Revenue	Other Funding Sources	Authority Only	Total
Mobley Diversion Watershed			300,000			300,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Fort Peck Hatchery Infrastructure			720,000			720,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Fort Peck Hatchery Hydroelectric Generation						
			9,200,000			9,200,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Willow Creek Feeder Canal Project			1,250,000			1,250,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

Vandalia Fish Passage			5,000,000			5,000,000

Federal special revenue funds consist of federal funds received pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5."

Section 17. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. Effective date. [This act] is effective on passage and approval.

Approved May 12, 2011

Note: The striking of section 6 was done by Governor's line item veto dated May 12, 2011.

CHAPTER NO. 388

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations for reclamation and development grants. (1) There is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account established in 15-38-302 up to $800,000 to be used for planning reclamation and development grant projects to be awarded by the department over the course of the 2013 biennium.

(2) The amount of $5,883,800 is appropriated to the department of natural resources and conservation from the natural resources projects state special revenue account from funds allocated for the purpose of making reclamation and development grants over the course of the 2013 biennium.

(3) The funds appropriated in subsection (2) must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

Section 2. Approved grants and projects. (1) The legislature approves the grants listed in subsection (2), in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 4 and 5] are met, funds must be awarded up to the amounts approved in this section. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be offered for projects and activities farther down the priority list that would not otherwise receive funding. If at any time a grant sponsor determines a project will not begin before June 30, 2013, the sponsor shall notify the department of natural resources and conservation. After receiving notification, the department may revert the grant amount to the natural resources projects state special revenue account to make it immediately available for other projects. After all eligible projects are funded, any remaining project funds may be used for reclamation and development planning grants authorized under [section 1] or grant programs authorized by the 62nd legislature in House Bill No. 6. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 62nd legislature for the 2013 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Montana Board of Oil and Gas Conservation (Eastern District Orphaned Well Plug and Abandonment and Site Restoration)	$300,000
(North/Eastern District Orphaned Well Plug and Abandonment and Site Restoration)	$300,000
Ruby Valley Conservation District (Alder Gulch - Phase I Improvements)	$300,000
Montana Department of Environmental Quality (Forest Rose Mine and Mill Site Reclamation)	$300,000
Montana Department of Environmental Quality (Lily/Orphan Boy Mine Reclamation)	$300,000
Sanders County (Managing Aquatic Invasive Plant Species to Protect Montana's Water Resources)	$300,000
Montana Department of Fish, Wildlife, and Parks (Big Spring Creek PCB Remediation)	$300,000
Montana Department of Natural Resources and Conservation (St. Mary and Milk River Basins Water Management)	$250,000
Montana Department of Environmental Quality (Sand Coulee Public Water Supply Restoration)	$300,000
Pondera County (Pondera County Oil & Gas Well Plug & Abandon)	$100,000
Teton County (Teton County Oil and Gas Well Plug and Abandon)	$60,000
Fort Peck Tribes (Reclamation of the Philip Red Eagle 2-25 Salt Water Disposal Well)	$254,782
Montana Board of Oil and Gas Conservation (Southern District Orphaned Lease Battery Site Restoration)	$200,000
Shelby, City of (Reclamation of Shelby Refinery)	$300,000
Missoula County (Ninemile Creek Mining District - Phase II)	$228,345
Montana Department of Environmental Quality (Zortman and Landusky Mines Source Control Prioritization Evaluation)	$300,000
Missoula, City of (Missoula Sawmill Site Wood Waste Reclamation)	$300,000
Butte-Silver Bow County (Butte Mining District: Reclamation and Protection Phase III)	$300,000
Fergus County (Pentachlorophenol Cleanup)	$300,000
Meagher County Conservation District (Thomas Creek Placer Surface Flow Enhancement and Stream Stabilization)	$162,797

Montana Department of Environmental Quality (Beal Mountain Mine Pit Run On Controls and Pond Removal)	$134,800
Crow Tribe (Little Bighorn River Restoration)	$300,000
~~Richland County Conservation District~~ ~~(Lower Yellowstone River Bank Stabilization)~~	~~$293,078~~
Montana Department of Environmental Quality (Landusky Mine Clarifier Construction)	$300,000
Montana Department of Fish, Wildlife, and Parks (Impacts of Energy Development on Mule Deer)	$300,000
Anaconda-Deer Lodge County (Anaconda Superfund Remediation Trails Program)	$300,000

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2013 biennium pursuant to 17-7-302.

Section 3. Termination of previous project — appropriation. The appropriation for and authorization of the department of environmental quality Frohner mine reclamation project established in section 2, Chapter 308, Laws of 2005, are terminated. For the 2013 biennium, the amount of $400,000 is appropriated to the department of natural resources and conservation to control invasive aquatic species in state waters.

Section 4. Coordination of fund sources for grants program projects. With the exception of planning grants, a sponsor of a grants program project who has applied for a grant for the same project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

Section 5. Conditions of grants. Disbursement of grant funds under [sections 1 through 3] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature for the 2013 biennium.

(3) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(4) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 6. Other appropriations. For any entity that receives a grant under [sections 1 through 3], an appropriation is established upon award of the grant by the department of natural resources and conservation. Grants to entities from prior biennia are reauthorized for completion of contract work.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 8. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

Note: The striking of languange in section 2 was done by Governor's line item veto dated May 12, 2011.

CHAPTER NO. 389

[HB 351]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY INFRASTRUCTURE PLANNING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; REQUIRING THE TRANSFER OF MONEY FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT TO THE STATE GENERAL FUND; RETAINING THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND WITHIN THE COAL SEVERANCE TAX TRUST FUND FOR AN ADDITIONAL 4 YEARS; EXTENDING TRANSFERS TO THE TREASURE STATE ENDOWMENT FUND AND THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND TO 2020; REVISING GRANT CONDITIONS AND RANKING PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 17-5-703, 90-6-703, AND 90-6-710, MCA; AMENDING SECTION 6, CHAPTER 495, LAWS OF 1999, AND SECTION 1, CHAPTER 70, LAWS OF 2001; REPEALING SECTION 2, CHAPTER 70, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from treasure state endowment state special revenue account. (1) There is appropriated to the department of commerce $13,753,578 from the treasure state endowment state special revenue account to be used to finance grants authorized by this section. The department shall also use any funds appropriated to the department in [section 2].

(2) The funds appropriated in [section 2] and this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 3 and 4]. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the

manner of disbursement set forth in [section 4] until interest earnings deposited into the treasure state endowment state special revenue account during the 2013 biennium are expended.

(3) The following applicants and projects are authorized for grants and listed in the order of their priority:

Applicant/Project	Grant Amount
1. Hardin, City of (water)	$500,000
~~2. Park County (bridge)~~	~~555,626~~
~~3. Sheridan, Town of (wastewater)~~	~~750,000~~
4. Yellowstone County (bridge)	157,227
~~5. Madison County (bridge)~~	~~699,931~~
6. Brady County Water & Sewer District (water)	750,000
7. Carter Chouteau County Water & Sewer District (water)	750,000
8. Sun Prairie Village County Water & Sewer District (water)	625,000
~~9. Sweet Grass County (bridge)~~	~~156,678~~
10. Beaverhead County (bridge)	426,941
~~11. Carbon County (bridge)~~	~~406,695~~
12. Jefferson County (bridge)	218,634
13. Hebgen Lake Estates County Water & Sewer District (wastewater)	720,000
14. Augusta Water & Sewer District (wastewater)	295,000
15. Gallatin Gateway County Water & Sewer District (wastewater)	750,000
~~16. Fergus County (bridge)~~	~~276,157~~
17. Melrose Water & Sewer District (wastewater)	162,000
18. Blaine County (bridge)	434,309
19. Deer Lodge, City of (wastewater)	500,000
~~20. Lincoln County (bridge)~~	~~287,827~~
21. West Yellowstone-Hebgen Basin Refuse Disposal District (solid waste)	246,563
22. Eureka, Town of (wastewater)	625,000
23. Fairfield, Town of (water)	500,000
24. Ravalli County (bridge)	142,616
25. Granite County (bridge)	276,408
~~26. Roundup, City of (water)~~	~~500,000~~
27. Roberts Carbon County Water & Sewer District (wastewater)	500,000
28. Lockwood Water & Sewer District (wastewater)	750,000
29. North Havre County Water District (water)	590,000
30. Sand Coulee Water District (water)	200,966
31. East Helena, City of (wastewater)	750,000
32. Bigfork Water & Sewer District (water)	750,000
33. Custer County (wastewater)	750,000
34. Crow Tribe for Crow Agency (water)	750,000
35. Hill County (bridge)	174,082
36. Polson, City of (water)	625,000

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment state special revenue account funds during the 2013 biennium pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) If funds deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2013, are insufficient to fully fund the projects numbered 1 through 30 in subsection (3) that have satisfied the conditions described in [section 4(1)] by June 30, 2013, these projects may be funded from deposits into the treasure state endowment special revenue account made during the 2015 biennium before projects authorized by the 63rd legislature receive funding from the account. However, any of the projects numbered 1 through 30 listed in subsection (3) that have not completed the conditions described in [section 4(1)] by January 1, 2013, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(6) Projects numbered 31 through 36 listed in subsection (3) that have satisfied the conditions described in [section 4(1)] may not receive grant funds unless sufficient funds have been deposited into the treasure state endowment special revenue account to fully fund the projects numbered 1 through 30 in subsection (3). However, if a subsequent legislature withdraws funding for any of the projects numbered 1 through 30 listed in subsection (3), if the department determines that any of the projects numbered 1 through 30 listed in subsection (3) will be unable to meet the startup condition described in [section 4(1)(b)], or if a project submits a written withdrawal to the department indicating it no longer requires a grant, those funds may be made available to projects numbered 31 through 36 listed in subsection (3) that have completed the conditions described in [section 4(1)].

(7) In the event that any remaining funds deposited into the treasure state endowment state special revenue account during the 2013 biennium are insufficient to fully fund any one of the grant recipients listed in subsection (3), the department may make the remaining funds available to the first grant recipient that has satisfied the conditions described in [section 4(1)] and that is able to firmly commit the balance of the amount necessary to fund the project in its entirety.

(8) Grant recipients shall complete all of the conditions described in [section 4(1)] by December 31, 2014, or the grant contract will be terminated.

Section 2. Contingent appropriation from treasure state endowment state special revenue account. (1) On or before July 15, 2011, the department of commerce shall determine how much of the loan of $6,512,000 authorized by subsection (6) of section 1, Chapter 458, Laws of 2009, was borrowed from the board of investments, how many projects satisfied the conditions described in subsection (1) of section 3, Chapter 458, Laws of 2009, the amount of the loan that will not be encumbered based on the inability of projects to satisfy the conditions, and the difference between the $6,512,000 loan and the amount of the loan that will not be encumbered. The department shall report these findings to the board of investments, the legislative fiscal division, and the office of budget and program planning on or before July 19, 2011.

(2) The board of investments shall use the difference between the $6,512,000 loan authorization and the amount of the loan authorization that will not be encumbered to determine the maximum level of debt service that may be

required by the treasure state endowment program for fiscal years 2012 and 2013. For the purpose of this analysis, the board of investments shall assume that the amount reported by the department was an obligation of the treasure state endowment program on July 1, 2011, and the cost of the loan will be an obligation to the program. On or before August 1, 2011, the board of investments shall certify the resulting maximum level of debt service for fiscal years 2012 and 2013 to the department, the legislative fiscal division, and the office of budget and program planning.

(3) Subject to an appropriation limit, as provided in this subsection, if the maximum level of debt service for fiscal years 2012 and 2013 is less than $840,000, then the difference between $840,000 and the maximum level of debt service is appropriated from the treasure state endowment state special revenue account to the department of commerce to finance the grants authorized in [section 1]. The appropriation provided for in this subsection may not exceed $840,000.

(4) If funds are appropriated in this section, they must be used to increase the appropriation in [section 1(1)] for the purpose set forth in [section 1].

Section 3. Approval of grants — completion of biennial appropriation. (1) The legislature, pursuant to 90-6-701 and 90-6-703, authorizes grants for the projects identified in [section 1(3)], the emergency infrastructure projects in [section 6], and for infrastructure planning in [section 7].

(2) The authorization of these grants completes a biennial appropriation from the treasure state endowment special revenue account provided for in 17-5-703(3)(c).

Section 4. Conditions of grants — disbursement of funds. (1) The disbursement of grant funds under [sections 1 through 4] for the projects specified in [section 1(3)] is subject to completion of the following conditions:

(a) The grant recipient shall execute a grant agreement with the department of commerce.

(b) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(c) The grant recipient must have a project management plan that is approved by the department.

(d) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133.

(e) The grant recipient shall satisfactorily comply with any conditions described in the grant recipient's application for treasure state endowment assistance and any written conditions that were imposed on the application by the department during the application ranking process.

(f) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities

or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(3) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the most recent edition of the treasure state endowment program project administration manual, adopted by the department of commerce through the administrative rulemaking process.

Section 5. Other powers and duties of department. (1) The department of commerce shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(2) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion:

(a) reduce the amount of grant funds to be provided to grant recipients in proportion to all other project funding sources; or

(b) authorize the use of the remaining authorized grant amounts for the construction of additional infrastructure components directly related to the approved project that will further enhance the overall system.

(3) If the grant recipient obtains a greater amount of grant funds than was contained in the treasure state endowment program application, the department may reduce the amount of the treasure state endowment program grant funds to be provided to ensure that the grant recipient continues to meet the threshold requirements contained in program guidelines for receiving the larger treasure state endowment program grant.

Section 6. Appropriations from treasure state endowment state special revenue account for emergency grants. There is appropriated to the department of commerce $100,000 for the biennium beginning July 1, 2011, from the treasure state endowment special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

Section 7. Appropriations from treasure state endowment state special revenue account for infrastructure planning grants. There is appropriated to the department of commerce $900,000 for the biennium beginning July 1, 2011, from the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with preliminary infrastructure planning grants for infrastructure projects as defined in 90-6-701.

Section 8. Appropriation from treasure state endowment regional water system special revenue account. (1) There is appropriated $3.92 million to the department of natural resources and conservation from the interest earnings of the treasure state endowment regional water system special revenue account and other funds to finance the state's share of regional water system projects authorized by this section and as set forth in 90-6-715.

(2) The dry prairie rural water authority and the north central Montana regional water authority are authorized to receive funds.

(3) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 10(1)].

(4) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system special revenue account funds received during the 2013 biennium under 17-7-302.

Section 9. Approval of funds — completion of appropriation. (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 8(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(3)(d).

Section 10. Conditions — manner of disbursement of funds. (1) The disbursement of funds under [sections 8 and 9] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

Section 11. Fund transfers. (1) The state treasurer shall transfer $1.57 million from the treasure state endowment special revenue account to the state general fund.

(2) The state treasurer shall transfer $1 million from the treasure state endowment regional water system special revenue account to the state general fund.

(3) The transfers in subsections (1) and (2) must occur prior to July 1, 2013.

(4) The state treasurer is authorized to transfer interest earnings from the treasure state endowment fund to the treasure state endowment special revenue account for the purpose of completing the fund transfer in subsection (1).

(5) The state treasurer is authorized to transfer interest earnings from the treasure state endowment regional water system fund to the treasure state endowment regional water special revenue account for the purpose of completing the fund transfer in subsection (2).

Section 12. Section 17-5-703, MCA, is amended to read:

"17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a big sky economic development fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable

from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) and (4).

(3) (a) Until June 30, ~~2016~~ *2020*, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) Until June 30, ~~2016~~ *2020*, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(c) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under 90-6-715. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(4) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, ~~2016~~ *2020* — ~~sec. 1, Ch. 70, L. 2001~~.)

17-5-703. (Effective July 1, ~~2016~~ *2020*) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a big sky economic development fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) and (4).

(3) (a) Until June 30, ~~2016~~ *2020*, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(4) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in 90-1-205, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with 90-1-204. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 13. Section 90-6-703, MCA, is amended to read:

"90-6-703. Types of financial assistance available. (1) The legislature shall provide for and make available to local governments the following types of financial assistance under this part:

(a) matching grants for local infrastructure projects;

(b) matching grants for ~~preliminary engineering studies~~ *infrastructure planning*; and

(c) emergency grants for local infrastructure projects.

(2) The department of commerce may provide local governments with emergency grants for infrastructure projects only if necessary to remedy conditions that, if allowed to continue until legislative approval could be obtained, will endanger the public health or safety and expose the applicant to substantial financial risk. The department shall report to the governor and the legislative finance committee regarding emergency grants that are awarded during each biennium.

(3) The department of commerce may provide local governments with matching grants for ~~preliminary engineering studies for~~ infrastructure ~~projects~~

planning. The department shall report to the governor and the legislature regarding ~~preliminary engineering~~ *infrastructure planning* grants that are awarded during each biennium."

Section 14. Section 90-6-710, MCA, is amended to read:

"90-6-710. Priorities for projects — procedure — rulemaking. (1) The department of commerce must receive proposals for infrastructure projects from local governments *on a continual basis*. The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. For the projects under 90-6-703(1)(a), the department shall prepare and submit ~~a list~~ *two lists* containing the recommended projects and the recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to subsection (2) *and this subsection. One list must contain the ranked and recommended bridge projects, and the other list must contain the remaining ranked and recommended infrastructure projects referred to in 90-6-701(3)(a). Each list must be prioritized pursuant to subsection (2) of this section, but the department may recommend up to 20% of the interest earnings anticipated to be deposited into the treasure state endowment fund established in 17-5-703 during the following biennium for bridge projects. Before making recommendations to the governor, the department may adjust the ranking of projects by giving priority to urgent and serious public health or safety problems*. The governor shall review the projects recommended by the department and shall submit ~~a list~~ *the lists* of recommended projects and the recommended financial assistance to the legislature.

(2) In preparing recommendations under subsection (1), preference must be given to infrastructure projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems or that enable local governments to meet state or federal health or safety standards;

(b) projects that reflect greater need for financial assistance than other projects;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;

(e) projects that enable local governments to obtain funds from sources other than the funds provided under this part;

(f) projects that provide long-term, full-time job opportunities for Montanans, that provide public facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain the tax base or that encourage expansion of the tax base; and

(g) projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department shall adopt rules necessary to implement the treasure state endowment program.

(5) The department shall report to each regular session of the legislature the status of all projects that have not been completed in order for the legislature to

review each project's status and determine whether the authorized grant should be withdrawn."

Section 15. Section 6, Chapter 495, Laws of 1999, is amended to read:

"Section 6. Termination. [This act] terminates June 30, ~~2013~~ *2020*."

Section 16. Section 1, Chapter 70, Laws of 2001, is amended to read:

"Section 1. Section 6, Chapter 495, Laws of 1999, is amended to read:

"**Section 6. Termination**. ~~[This act]~~ *[This act]* ~~terminates~~ *terminates* June 30, ~~2013~~ *2016 2020*.""

Section 17. Repealer. Section 2, Chapter 70, Laws of 2001, is repealed.

Section 18. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 19. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

Note: The striking of languange in section 1 was done by Governor's line item veto dated May 12, 2011.

CHAPTER NO. 390

[HB 363]

AN ACT ESTABLISHING THE USE OF FEES COLLECTED FROM THE SALE OF WOLF HUNTING LICENSES; ESTABLISHING THE WOLF MANAGEMENT ACCOUNT; AUTHORIZING THE TRANSFER OF FUNDS; AMENDING SECTIONS 87-1-601, 87-2-523, 87-2-524, AND 87-5-132, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-601, MCA, is amended to read:

"87-1-601. (Temporary) Use of fish and game money. (1) (a) Except as provided in *[section 5] and* subsections (7) and (9) *of this section*, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1)

must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621 and section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons

engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs.

87-1-601. (Effective March 1, 2011) Use of fish and game money. (1) (a) Except as provided in 87-1-290*, [section 5],* and subsections (7) and (9) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in 87-1-621 and section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If

the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

Section 2. Section 87-2-523, MCA, is amended to read:

"87-2-523. Class E-1—resident wolf license. *(1)* Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $19, may receive a Class E-1 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

(2) Fees collected pursuant to this section must be deposited and used in accordance with [section 5]."

Section 3. Section 87-2-524, MCA, is amended to read:

"87-2-524. Class E-2—nonresident wolf license. *(1)* Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of $350, may receive a Class E-2 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

(2) Fees collected pursuant to this section must be deposited and used in accordance with [section 5]."

Section 4. Section 87-5-132, MCA, is amended to read:

"87-5-132. Use of radio-tracking collars for monitoring wolf packs. (1) As part of a wolf management plan approved by the department, a radio-tracking collar must be attached to at least one wolf in each wolf pack that is active near livestock or near a population center in areas where depredations are chronic or likely.

(2) The department ~~shall~~ *may* expend ~~only the~~ *any* federal funds *received* for wolf management purposes *and the portion of money allocated from the wolf management account established in [section 5]* to fulfill the requirements of this section.

(3) The department ~~may~~ *shall* collaborate ~~and~~ *and* cooperate *and may enter into agreements* with other state and federal agencies*, including the United States department of agriculture wildlife services,* to fulfill the requirements of this section."

Section 5. Wolf management account. (1) There is a wolf management account in the state special revenue fund established in 17-2-102. Fees collected from the sale of Class E-1 and Class E-2 wolf licenses and interest earned on the account must be deposited into the account. Subject to appropriation by the legislature, money deposited in the account must be used exclusively for the management of wolves as specified in subsection (2).

(2) Money deposited in accordance with subsection (1) must be equally divided and allocated for the following purposes:

(a) wolf-collaring activities conducted pursuant to 87-5-132; and

(b) lethal action conducted pursuant to 87-1-217 to take problem wolves that attack livestock.

(3) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

Section 6. Transfer of funds. On [the effective date of this act], the department of fish, wildlife, and parks shall transfer from the general license account to the wolf management account established in [section 5] any revenue collected from the sale of Class E-1 and Class E-2 wolf licenses prior to [the effective date of this act].

Section 7. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 87, chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to [section 5].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 391

[HB 372]

AN ACT ESTABLISHING A PREFERENCE POINT SYSTEM FOR DISTRIBUTING CERTAIN NONRESIDENT HUNTING LICENSES; AMENDING SECTION 87-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

"87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than $1,000 but less than $5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) ~~The~~ *Subject to the provisions of [section 2], the* commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."

Section 2. Nonresident elk and deer license preference point system. (1) The department shall establish a preference point system to distribute Class B-10 nonresident big game combination licenses and Class B-11 nonresident deer combination licenses.

(2) In addition to payment of any fees established in 87-2-113, 87-2-505, and 87-2-510, nonresidents applying to purchase a Class B-10 or Class B-11 license may purchase a preference point, upon payment of a nonrefundable $50 fee, that gives an applicant who has more preference points priority to receive a Class B-10 or Class B-11 license over an applicant who has purchased fewer preference points.

(3) An applicant may:

(a) purchase only one preference point per license year; and

(b) purchase a preference point without applying for a Class B-10 or Class B-11 license. An applicant not applying for a Class B-10 or Class B-11 license may purchase a preference point only between July 1 and September 30 prior to the applicable license year. The department shall delete an applicant's accumulated preference points if the applicant does not apply for a Class B-10 or Class B-11 license for 2 consecutive years.

(4) Except as provided in subsection (3)(b), the department may not delete an applicant's accumulated preference points unless the applicant obtains the

license applied for, in which case the department shall delete the applicant's accumulated preference points.

(5) The department shall issue 75% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants in the order of which applicants have purchased the greatest number of preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (6).

(6) The department shall issue 25% of the Class B-10 and Class B-11 licenses made available for purchase pursuant to 87-2-505 and 87-2-510 by drawings in which the licenses are awarded to applicants who have not purchased any preference points. If the number of licenses to be issued under this subsection exceeds the number of applicants who have not purchased preference points, the remaining licenses must be added to the licenses issued pursuant to subsection (5).

(7) Up to five applicants may apply as a party under this section. The department shall use an average of the number of preference points accumulated by those applicants to determine their priority in receiving licenses issued pursuant to subsection (5). The department shall consider any fraction that results from the calculation of an average when determining that priority.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 392

[HB 377]

AN ACT ALLOWING THE USE OF MEDICATION AIDES IN LONG-TERM CARE FACILITIES; ESTABLISHING QUALIFICATIONS AND SCOPE OF PRACTICE FOR CERTAIN MEDICATION AIDES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 37-8-102 AND 37-8-422, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-8-102, MCA, is amended to read:

"37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide *I*" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, ~~an advanced practice registered nurse with~~

~~prescriptive authority, a dentist, an osteopath, or a podiatrist~~ *naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist* authorized by state law to prescribe drugs.

(5) "Medication aide II" means a person who in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101, uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe drugs.

~~(5)~~*(6)* "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

~~(6)~~*(7)* "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

~~(7)~~*(8)* (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

~~(8)~~*(9)* "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, optometrists, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection ~~(8)~~ *(9)*:

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 2. Section 37-8-422, MCA, is amended to read:

"37-8-422. Medication aide *I* — scope of practice. A medication aide *I* may:

(1) perform services requiring basic knowledge of medications and medication administration under specific circumstances as determined by the board by administrative rule;

(2) practice only in a licensed assisted living facility, as defined in 50-5-101; and

(3) practice only under the general supervision of a licensed professional or practical nurse."

Section 3. Medication aide II — qualifications. An applicant for a license to practice as a medication aide II shall submit to the board written evidence that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of public instruction;

(2) holds a valid certificate from the department of public health and human services as a certified nursing assistant;

(3) has been employed as a certified nursing assistant in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101, for a minimum of 2 years;

(4) holds a valid certificate in cardiopulmonary resuscitation;

(5) (a) has successfully completed a training program specified by the board that includes 100 hours of education consisting of classroom instruction, laboratory skills, and supervised medication administration related to basic pharmacology and principles of safe medication administration; or

(b) is currently licensed as a medication aide in another state with a program that is determined by the board to be reasonably equivalent to the board-specified program;

(6) has passed a board-approved competency examination with at least 80% proficiency; and

(7) has completed 12 hours of annual continuing education in pharmacology and medication administration.

Section 4. Medication aide II — scope of practice. (1) A licensed medication aide II may:

(a) perform services requiring basic knowledge of medications and medication administration subject to the limitations outlined in subsection (2);

(b) practice only in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101; and

(c) practice only under the supervision of a licensed professional or practical nurse who is on the premises.

(2) A licensed medication aide II may not:

(a) administer medications on an as-needed basis;

(b) administer parenteral or subcutaneous medications except for prelabeled, predrawn insulin;

(c) administer medications through nasogastric routes or by gastrostomy or jejunostomy tubes;

(d) convert or calculate dosages; or

(e) take verbal orders related to changes in medications and dosages.

Section 5. Medication aide — title. Any person who holds a valid license to practice as a medication aide in this state may use the title licensed medication aide I or licensed medication aide II and the abbreviations "LMA I" or "LMA II" respectively.

Section 6. Medication aide II — implementation. The board shall establish rules implementing the provisions of [this act] and providing for the establishment of requirements for license renewal, including but not limited to continuing education, continued certification as a certified nursing assistant and medication aide II, and mandatory cardiopulmonary resuscitation certification.

Section 7. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 37, chapter 8, part 4, and the provisions of Title 37, chapter 8, part 4, apply to [sections 3 through 5].

Approved May 12, 2011

CHAPTER NO. 393

[HB 495]

AN ACT REVISING STATUTORY APPROPRIATIONS; REDUCING STATUTORY APPROPRIATION DISTRIBUTIONS; CLARIFYING THE PROVISIONS OF THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENT PROGRAM; ELIMINATING THE LOCAL GOVERNMENT ENTITLEMENT SHARE ANNUAL GROWTH FACTOR FOR FISCAL YEARS 2012 AND 2013; REVISING THE ENTITLEMENT SHARE GROWTH RATE; REDUCING THE LOCAL GOVERNMENT ENTITLEMENT SHARE FOR TAX INCREMENT FINANCING DISTRICTS; ELIMINATING THE THREE-FIFTHS VOTE REQUIREMENT FOR REVISION OF THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENTS; PROHIBITING AN INCREASE IN THE NUMBER OF MILLS A LOCAL GOVERNMENT MAY LEVY FOR A REIMBURSED TAX BASE DECREASE; AMENDING SECTIONS 15-1-121 AND 15-10-420, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — *purpose* — appropriation. (1) *As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government's share. The reimbursement under this section is provided by direct payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments.* ~~The amount calculated pursuant to this subsection, as adjusted pursuant to subsection (3)(a)(i), is each local government's base entitlement~~

~~share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:~~

(2) The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-9-506; and

(iv) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;

(g) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(h) late filing fees pursuant to 61-3-220;

(i) title and registration fees pursuant to 61-3-203;

(j) veterans' cemetery license plate fees pursuant to 61-3-459;

(k) county personalized license plate fees pursuant to 61-3-406;

(l) special mobile equipment fees pursuant to 61-3-431;

(m) single movement permit fees pursuant to 61-4-310;

(n) state aeronautics fees pursuant to 67-3-101; and

(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

~~(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses,~~

~~and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.~~

~~(b)~~*(3)* The *total* amount ~~estimated pursuant to subsections (1) and (2)(a)~~ *received by each local government in fiscal year 2011 as an entitlement share payment under this section is the base component for fiscal year 2012 and 2013 distributions, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7),* is each local government's base ~~year~~ component. The sum of all local governments' base ~~year~~ components is the ~~base~~ *fiscal* year entitlement share pool. ~~For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.~~

~~(3)~~*(4)* (a) ~~The~~ *With the exception of fiscal years 2012 and 2013, the* base ~~year~~ entitlement share pool must be increased annually by ~~a~~ *an entitlement share* growth rate as provided for in this subsection ~~(3)~~ *(4)*. The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year*, with the exception of fiscal years 2012 and 2013*.

(b) By October 1 of each ~~even-numbered~~ year, the department shall calculate the growth rate of the entitlement share pool for ~~each~~ *the current* year ~~of the next biennium~~ in the following manner:

~~(i) Before applying the growth rate for fiscal year 2007 to determine the fiscal year 2007 entitlement share payments, the department shall subtract from the fiscal year 2006 entitlement share payments the following amounts:~~

~~Beaverhead~~	~~$6,972~~
~~Big Horn~~	~~$52,551~~
~~Blaine~~	~~$13,625~~
~~Broadwater~~	~~$2,564~~
~~Carbon~~	~~$11,537~~
~~Carter~~	~~$407~~
~~Cascade~~	~~$100,000~~
~~Chouteau~~	~~$3,536~~
~~Custer~~	~~$7,011~~
~~Daniels~~	~~$143~~
~~Dawson~~	~~$3,893~~
~~Fallon~~	~~$1,803~~
~~Fergus~~	~~$9,324~~
~~Flathead~~	~~$100,000~~
~~Gallatin~~	~~$160,000~~
~~Garfield~~	~~$91~~
~~Glacier~~	~~$3,035~~
~~Golden Valley~~	~~$2,282~~
~~Granite~~	~~$4,554~~
~~Hill~~	~~$31,740~~
~~Jefferson~~	~~$5,700~~
~~Judith Basin~~	~~$1,487~~
~~Lake~~	~~$38,314~~
~~Lewis and Clark~~	~~$160,000~~

~~Liberty $152~~
~~Lincoln $3,759~~
~~Madison $8,805~~
~~McCone $1,651~~
~~Meagher $2,722~~
~~Mineral $2,361~~
~~Missoula $200,000~~
~~Musselshell $23,275~~
~~Park $6,582~~
~~Petroleum $36~~
~~Phillips $653~~
~~Pondera $10,270~~
~~Powder River $848~~
~~Powell $5,146~~
~~Prairie $717~~
~~Ravalli $93,090~~
~~Richland $3,833~~
~~Roosevelt $9,526~~
~~Rosebud $19,971~~
~~Sanders $30,712~~
~~Sheridan $271~~
~~Stillwater $12,117~~
~~Sweet Grass $2,463~~
~~Teton $5,560~~
~~Toole $7,113~~
~~Treasure $54~~
~~Valley $6,899~~
~~Wheatland $918~~
~~Wibaux $72~~
~~Yellowstone $270,000~~
~~Anaconda-Deer Lodge $20,707~~
~~Butte-Silver Bow $53,057~~
~~Alberton $675~~
~~Bainville $258~~
~~Baker $2,828~~
~~Bearcreek $143~~
~~Belgrade $11,704~~
~~Belt $1,056~~
~~Big Sandy $1,130~~
~~Big Timber $2,910~~
~~Billings $163,499~~
~~Boulder $2,340~~
~~Bozeman $52,805~~
~~Bridger $1,303~~

~~Broadus $766~~
~~Broadview $258~~
~~Brockton $414~~
~~Browning $1,830~~
~~Cascade $1,374~~
~~Chester $1,430~~
~~Chinook $2,275~~
~~Choteau $3,050~~
~~Circle $1,018~~
~~Clyde Park $572~~
~~Colstrip $4,090~~
~~Columbia Falls $6,805~~
~~Columbus $3,245~~
~~Conrad $4,562~~
~~Culbertson $1,216~~
~~Cut Bank $5,316~~
~~Darby $1,348~~
~~Deer Lodge $5,708~~
~~Denton $503~~
~~Dillon $6,928~~
~~Dodson $194~~
~~Drummond $561~~
~~Dutton $661~~
~~East Helena $2,888~~
~~Ekalaka $689~~
~~Ennis $1,518~~
~~Eureka $1,733~~
~~Fairfield $1,120~~
~~Fairview $1,152~~
~~Flaxville $143~~
~~Forsyth $3,286~~
~~Fort Benton $2,579~~
~~Fort Peck $393~~
~~Froid $328~~
~~Fromberg $855~~
~~Geraldine $457~~
~~Glasgow $5,361~~
~~Glendive $8,099~~
~~Grass Range $254~~
~~Great Falls $96,422~~
~~Hamilton $7,148~~
~~Hardin $5,920~~
~~Harlem $1,422~~
~~Harlowton $1,678~~

~~Havre $16,223~~
~~Helena $45,877~~
~~Hingham $263~~
~~Hobson $397~~
~~Hot Springs $912~~
~~Hysham $482~~
~~Ismay $43~~
~~Joliet $1,006~~
~~Jordan $606~~
~~Judith Gap $263~~
~~Kalispell $28,144~~
~~Kevin $304~~
~~Laurel $10,804~~
~~Lavina $361~~
~~Lewistown $10,170~~
~~Libby $4,475~~
~~Lima $397~~
~~Livingston $12,145~~
~~Lodge Grass $889~~
~~Malta $3,389~~
~~Manhattan $2,485~~
~~Medicine Lake $410~~
~~Melstone $234~~
~~Miles City $14,152~~
~~Missoula $104,264~~
~~Moore $319~~
~~Nashua $536~~
~~Neihart $149~~
~~Opheim $180~~
~~Outlook $125~~
~~Philipsburg $1,612~~
~~Pinesdale $1,413~~
~~Plains $2,007~~
~~Plentywood $3,185~~
~~Plevna $225~~
~~Polson $7,722~~
~~Poplar $1,544~~
~~Red Lodge $3,903~~
~~Rexford $263~~
~~Richey $309~~
~~Ronan $3,262~~
~~Roundup $3,280~~
~~Ryegate $465~~
~~Saco $354~~

~~Scobey $1,798~~
~~Shelby $5,677~~
~~Sheridan $1,150~~
~~Sidney $7,747~~
~~Stanford $737~~
~~Stevensville $3,063~~
~~St. Ignatius $1,367~~
~~Sunburst $709~~
~~Superior $1,521~~
~~Terry $1,011~~
~~Thompson Falls $2,272~~
~~Three Forks $3,130~~
~~Townsend $3,286~~
~~Troy $1,654~~
~~Twin Bridges $695~~
~~Valier $817~~
~~Virginia City $223~~
~~Walkerville $1,183~~
~~West Yellowstone $2,083~~
~~Westby $263~~
~~White Sulphur Springs $1,734~~
~~Whitefish $9,932~~
~~Whitehall $1,889~~
~~Wibaux $893~~
~~Winifred $259~~
~~Winnett $314~~
~~Wolf Point $4,497~~

~~(ii)~~*(i)* The department shall calculate the ~~average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:~~

~~(A) the last 4 calendar years for which the information has been published; and~~

~~(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).~~

~~(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:~~

~~(A) the last 4 calendar years for which the information has been published; and~~

~~(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).~~

~~(b) (i) The entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):~~

~~(A) for counties, 54%;~~

~~(B) for consolidated local governments, 62%; and~~

~~(C) for incorporated cities and towns, 70%.~~

~~(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):~~

~~(A) for counties, 54%;~~

~~(B) for consolidated local governments, 62%; and~~

~~(C) for incorporated cities and towns, 70%.~~ *entitlement share growth rate based on the ratio of two factors of state revenue sources for the first, second, and third most recently completed fiscal years as recorded on the statewide budgeting and accounting system. The first factor is the sum of the revenue for the first and second previous completed fiscal years received from the sources referred to in subsection (2)(b), (2)(c), and (2)(g) divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.75. The second factor is the sum of the revenue for the first and second previous completed fiscal years received from individual income tax as provided in Title 15, chapter 30, and corporation income tax as provided in Title 15, chapter 31, divided by the sum of the revenue for the second and third previous completed fiscal years received from the same sources multiplied by 0.25.*

(ii) Except as provided in subsection (4)(b)(iii), the entitlement share growth rate is the lesser of:

(A) the sum of the first factor plus the second factor; or

(B) 1.03 for counties, 1.0325 for consolidated local governments, and 1.035 for cities and towns.

(iii) In no instance can the entitlement growth factor be less than 1. The entitlement share growth rate is applied to the most recently completed fiscal year entitlement payment to determine the subsequent fiscal year payment.

~~(4)~~*(5)* As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection ~~(6)~~ *(8)*. ~~For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government.~~ The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources ~~listed in subsection (1)~~ *for which reimbursement is provided in this section. The allocation for each special district that existed in 2002 must be based on the relative proportion of the loss of revenue in 2002.*

~~(5)~~*(6)* (a) The entitlement share pools calculated in this section and the ~~block grants~~ *funding* provided for in subsection ~~(6)~~ *(8)* are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. ~~Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool.~~ The distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. ~~For the purposes of subsection (5)(b)(ii)(A), a county with a negative~~

~~base year component has a base year component of zero.~~ The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the ~~base~~ *prior fiscal* year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the ~~base~~ *prior fiscal* year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the ~~base~~ *prior fiscal* year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool ~~not represented by~~ *before* the growth amount *or adjustments made under subsection (7) are applied* is *to be* distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share pool must be recomputed to determine each local government's ratio to be used in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

~~(6)~~*(8)* (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any ~~block grant~~ *funding*. If a tax increment financing district referred to in subsection ~~(6)(b)~~ *(8)(b)* terminates, then the ~~block grant~~ *funding for the district* provided for in subsection ~~(6)(b)~~ *(8)(b)* terminates.

(b) One-half of the payments provided for in this subsection ~~(6)(b)~~ *(8)(b)* must be made by November 30 and the other half by May 31 of each year. Subject to subsection ~~(6)(a)~~ *(8)(a)*, the entitlement share for tax increment financing districts is as follows:

~~Cascade~~	~~Great Falls - downtown~~	~~$468,966~~
Deer Lodge	TIF District 1	~~3,148~~ *$2,833*
Deer Lodge	TIF District 2	~~3,126~~ *2,813*
~~Flathead~~	~~Kalispell - District 1~~	~~758,359~~
Flathead	Kalispell - District 2	~~5,153~~ *4,638*
Flathead	Kalispell - District 3	~~41,368~~ *37,231*
Flathead	Whitefish District	~~164,660~~ *148,194*
Gallatin	Bozeman - downtown	~~34,620~~ *31,158*
~~Lewis and Clark~~	~~Helena - #2~~	~~731,614~~
Missoula	Missoula - ~~1-1B &~~ 1-1C	~~1,100,507~~ *225,251*
Missoula	Missoula - 4-1C	~~33,343~~ *30,009*
Silver Bow	Butte - uptown	~~283,801~~ *255,421*
~~Yellowstone~~	~~Billings~~	~~436,815~~

~~(7)~~*(9)* The estimated ~~base~~ *fiscal* year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from *tax increment financing districts, from* countywide transportation block grants*, or from countywide retirement block grants*.

~~(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(o) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.~~

~~(b) For the purposes of subsection (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.~~

~~(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).~~

(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(11) A local government may appeal the department's estimation of the base ~~year~~ component, the entitlement share ~~pool~~ growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 2. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the

completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity*:*

(a) may increase the number of mills to account for a decrease in reimbursements*; and*

(b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

(iv) a levy for the support of a study commission under 7-3-184;

(v) a levy for the support of a newly established regional resource authority; or

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 2011.

Section 5. Applicability. [This act] applies to fiscal years beginning after June 30, 2011.

Approved May 12, 2011

CHAPTER NO. 394

[HB 613]

AN ACT GENERALLY REVISING ELEMENTS OF THE BUDGETING PROCESS TO IMPLEMENT PROVISIONS OF THE GENERAL APPROPRIATIONS ACT; DEFINING THE BASE BUDGET FOR THE HUMAN AND COMMUNITY SERVICES DIVISION IN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THAT EMPLOYEES OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND ARE EXEMPT FROM VACANCY SAVINGS; REVISING REPORTING REQUIREMENTS FOR THE OFFICE OF STATE PUBLIC DEFENDER TO THE LEGISLATIVE FINANCE COMMITTEE; PROVIDING BENCHMARKS FOR CATEGORIZING PETROLEUM STORAGE TANK RELEASE SITES AS RESOLVED AND THE ELIMINATION OF THE BASE BUDGET WHEN BENCHMARKS ARE NOT MET; ESTABLISHING REPORTING REQUIREMENTS TO THE ENVIRONMENTAL QUALITY COUNCIL REGARDING THE CLOSURE OF PETROLEUM STORAGE TANK RELEASE SITES AS IT RELATES TO THE BASE BUDGET AND THE BENCHMARKS; AMENDING SECTIONS 17-7-102 AND 47-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-102, MCA, is amended to read:

"17-7-102. (Temporary) Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue

funds may not exceed that level of funding authorized by the previous legislature. For the biennium beginning July 1, 2011, the term includes items specified in section 85, Chapter 489, Laws of 2009.

(b) The term does not include funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) (a) "Present law base" means, subject to subsection (10)(b), that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(i) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(ii) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(iii) inflationary or deflationary adjustments;

(iv) elimination of nonrecurring appropriations; and

(v) items specified in section 85, Chapter 489, Laws of 2009.

(b) For the budget for the 2011 legislative session, present law base must be adjusted by reducing general fund budgets by the equivalent of that portion of the 2% across-the-board reduction assessed by the 61st legislature on selected agencies that was allocated by those agencies to personal services in the 2011 biennium. The director of the governor's office of budget and program planning and the legislative fiscal analyst shall agree on a mechanism for determining how agencies have allocated this reduction.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and

conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2011—sec. 35(1), Ch. 486, L. 2009; sec. 82, Ch. 489, L. 2009.)

17-7-102. (Effective July 1, 2011) Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) (a) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature. *For the biennium beginning July 1, 2013, the base budget for the human and community services division in the department of public health and human services may also include the state general fund equivalent to expenditures in fiscal year 2012 of one-time-only TANF federal special revenue funding appropriated during the 2013 biennium to the division for the purpose of child care.*

(b) The term does not include*:*

(i) funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met*;*

(ii) funding for petroleum storage tank leak prevention if the accountability benchmarks in [section 4] are not met.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell. (Terminates June 30, 2020—sec. 11, Ch. 319, L. 2007.)

17-7-102. (Effective July 1, 2020) Definitions. As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agencies; or

(f) the board of regents of higher education or its designated representative for the university system.

(4) "Base budget" means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(5) "Budget amendment" means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) "Emergency" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) "Present law base" means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

(11) "Program" means a principal organizational or budgetary unit within an agency.

(12) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(13) "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

Section 2. Section 47-1-201, MCA, is amended to read:

"47-1-201. Office of state public defender — personnel — compensation — expenses — reports. (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan, as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office and to implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan, as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

(ii) a chief appellate defender;

(iii) a chief contract manager to oversee and enforce the contracting program;

(iv) a training coordinator, appointed as provided in 47-1-210;

(v) deputy public defenders, as provided in 47-1-215;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

(8) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section.

(9) (a) The office of public defender is required to report data for each fiscal year *by September 30 of the subsequent fiscal year* representing the caseload for the entire public defender system to the legislative finance committee. The report must include *unduplicated count* data for ~~both employee and contract attorneys~~ *all cases for which representation is paid for by the office of public defender*, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening

and closure for each case type. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010.~~

(b) The office of public defender is required to report to the legislative finance committee for each fiscal year *by September 30 of the subsequent fiscal year* on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. ~~The report for fiscal year 2009 must be provided to the legislative finance committee by January 1, 2010, and the report for fiscal year 2010 must be provided to the legislative finance committee by September 30, 2010.~~"

Section 3. Montana school for the deaf and blind exempt from vacancy savings. (1) Vacancy savings may not be imposed on authorized positions in the Montana school for the deaf and blind, as described in 20-8-101.

(2) Each fiscal year, the board shall provide to the legislative audit committee provided for in 5-13-201 a detailed report on all authorized positions in the Montana school for the deaf and blind. At a minimum, the report must include the following information:

(a) the number of positions that were filled during the year and the average salary paid at hire; and

(b) the total number of vacancies incurred during the year broken out by position title, the cause of each vacancy, and the length of time the position remained vacant.

(3) For purposes of this section, the following definitions apply:

(a) "Authorized positions" means those positions included in the list of current authorized positions that the board is required to maintain under 2-18-206.

(b) "Board" means the board of public education created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(c) "Vacancy savings" means the difference between the cost of fully funding authorized positions for an entire fiscal year and the actual cost of those authorized positions during that period.

Section 4. Benchmarks — budget action taken if not met. (1) Categorizing petroleum storage tank release sites as resolved is a higher priority than investigation of new releases unless the new release is an imminent danger to the health and safety of the public.

(2) The department shall develop a list of open release sites prioritized by danger to the health and safety of the public and anticipated date of categorizing the sites as resolved.

(3) (a) The cumulative benchmarks that are provided in subsection (3)(b) must be met. If the benchmarks are not met, money appropriated for petroleum storage tank leak prevention may not be included in the department's base budget, as defined in 17-7-102, for the current biennium.

(b) The cumulative benchmarks are as follows:

Date	Total Number of Resolved Sites
December 31, 2011	45
July 1, 2012	90
December 31, 2012	135
July 1, 2013	180

December 31, 2013	225
July 1, 2014	270
December 31, 2014	315
July 1, 2015	360

(4) The department shall report to the environmental quality council established by 5-16-101 at the next regularly scheduled meeting of the council following the passing of each benchmark date in subsection (3)(b).

(5) As used in this section, the following definitions apply:

(a) "Petroleum storage tank" has the same meaning as prescribed in 75-11-302.

(b) "Release" has the same meaning as prescribed in 75-11-302.

(c) "Resolved" means a determination by the department that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment.

Section 5. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, part 1, apply to [section 3].

(2) [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 5, and the provisions of Title 75, chapter 11, part 5, apply to [section 4].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Coordination instruction. If House Bill No. 2 is not passed and approved, then [this act] is void.

Section 8. Effective date. [This act] is effective July 1, 2011.

Section 9. Termination. [Section 1(4)(a)] terminates June 30, 2013.

Approved May 12, 2011

CHAPTER NO. 395

[HB 619]

AN ACT REVISING FISH, WILDLIFE, AND PARKS FOREST MANAGEMENT LAWS BY REQUIRING THE CALCULATION OF AN ANNUAL SUSTAINABLE YIELD; ESTABLISHING A FOREST MANAGEMENT PLAN AND A SUSTAINABLE YIELD STUDY; ESTABLISHING THAT COSTS TO IMPLEMENT THE FOREST MANAGEMENT PLAN ARE AN AUTHORIZED EXPENDITURE; AMENDING SECTIONS 87-1-201 AND 87-1-621, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Forest management plan — sustainable yield study required — definition. (1) The commission shall adopt a forest management plan, based on an annual sustainable yield, to implement the provisions of 87-1-201(9)(a)(iv).

(2) The department, under the direction of the commission, shall, before July 1, 2012, commission a study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested

department lands. The department shall direct the qualified independent third party to determine the annual sustainable yield pursuant to all state and federal laws.

(3) The annual timber sale requirement for the timber sale program administered by the department to address fire mitigation, pine beetle infestation, and wildlife habitat enhancement may not exceed the annual sustainable yield.

(4) The commission shall review and redetermine the annual sustainable yield at least once every 5 years.

(5) Expenditures necessary to meet the requirements of this section are authorized to be made by the department pursuant to 87-1-601.

(6) For the purposes of this section, the term "annual sustainable yield" means the quantity of timber that can be harvested from forested department lands each year, taking into account the ability of forested lands to generate replacement tree growth and in accordance with:

(a) the provisions of 87-1-201(9)(a)(iv);

(b) state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds; and

(c) water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5.

Section 2. Section 87-1-201, MCA, is amended to read:

"87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state regarding the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is under the control of the department and is available for appropriation to the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species;

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

(iv) *in accordance with the forest management plan required by [section 1],* address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management area under the department's jurisdiction.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count."

Section 3. Section 87-1-621, MCA, is amended to read:

"87-1-621. (Temporary) Forest management account. (1) There is a special revenue account called the forest management account to the credit of the department of fish, wildlife, and parks.

(2) The forest management account consists of money deposited into the account from forest management projects undertaken pursuant to

~~87-1-201(9)(a)(iv)~~ *[section 1]* and from any other source. Any interest earned by the account must be deposited into the account.

(3) Except as otherwise directed by state or federal law, funds from the forest management account are statutorily appropriated, as provided in 17-7-502, to the department and must be used by the department to implement forest management projects that may result pursuant to the provisions of ~~87-1-201(9)(a)(iv)~~ *[section 1]*. (Terminates June 30, 2013—sec. 8, Ch. 330, L. 2009.)

87-1-621. (Effective July 1, 2013) Forest management account. (1) There is a special revenue account called the forest management account to the credit of the department of fish, wildlife, and parks.

(2) The forest management account consists of money deposited into the account from forest management projects undertaken pursuant to ~~87-1-201(9)(a)(iv)~~ *[section 1]* and from any other source. Any interest earned by the account must be deposited into the account.

(3) Except as otherwise directed by state or federal law, funds from the forest management account must be used by the department to implement forest management projects that may result pursuant to the provisions of ~~87-1-201(9)(a)(iv)~~ *[section 1]*."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to [section 1].

Section 5. Coordination instruction. If House Bill No. 2 is not passed and approved in a form that provides funding to the department of fish, wildlife, and parks to calculate an annual sustainable yield for department-owned lands, then [this act] is void.

Section 6. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 396

[SB 233]

AN ACT REVISING ENVIRONMENTAL IMPACT LAWS; REVISING STATUTES RELATED TO AN ENVIRONMENTAL IMPACT ANALYSIS AND AN ENVIRONMENTAL ASSESSMENT; PROVIDING DEFINITIONS; CLARIFYING THAT ALTERNATIVES INCLUDED IN AN ALTERNATIVES ANALYSIS ARE DISCRETIONARY; PROVIDING THAT THE SCOPE OF AN ENVIRONMENTAL REVIEW IS ONLY WITHIN MONTANA'S BORDERS; PROVIDING THE REMEDY FOR FAILURE BY AN AGENCY TO COMPLY WITH THE REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; REVISING THE ENVIRONMENTAL REVIEW FEE ASSESSMENT; AMENDING SECTIONS 75-1-102, 75-1-201, 75-1-203, 75-1-208, AND 75-1-220, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-102, MCA, is amended to read:

"75-1-102. Intent — purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act. The Montana Environmental Policy Act is procedural, and it is the legislature's

intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of state actions in order to ensure that*:*

(a) environmental attributes are fully considered *by the legislature in enacting laws to fulfill constitutional obligations; and*

(b) the public is informed of the anticipated impacts in Montana of potential state actions.

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent*, mitigate,* or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

(3) (a) The purpose of requiring an environmental assessment and an environmental impact statement under part 2 of this chapter is to assist the legislature in determining whether laws are adequate to address impacts to Montana's environment and to inform the public and public officials of potential impacts resulting from decisions made by state agencies.

(b) Except to the extent that an applicant agrees to the incorporation of measures in a permit pursuant to 75-1-201(6)(b), it is not the purpose of parts 1 through 3 of this chapter to provide for regulatory authority, beyond authority explicitly provided for in existing statute, to a state agency."

Section 2. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection (2)~~ *subsections (2) and (3)*, shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking *for a state-sponsored project* that may have an impact on the *Montana* human environment *by projects in Montana*; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) ~~through (1)(b)(iv)(C)(III)~~ *and (1)(b)(iv)(C)(II)* and, if requested by the project sponsor or if determined by the agency to be necessary, subsection ~~(1)(b)(iv)(C)(IV)~~ *(1)(b)(iv)(C)(III)*;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking *for state-sponsored projects*, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment *in Montana* are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment *in Montana* a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse ~~environmental~~ effects *on Montana's environment* that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

~~(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.~~

~~(IV)~~*(III)* the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the *Montana* human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources~~;~~. *If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a*

recommended course of action, but the project sponsor may agree pursuant to subsection (6)(b) to a specific course of action.

(vi) recognize the ~~national and~~ *potential* long-range character of environmental ~~problems~~ *impacts in Montana* and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality of ~~the world~~ *Montana's* environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of ~~the~~ *Montana's* environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the *legislature and the* environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved *in Montana* and with any *Montana* local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency *in Montana* with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature.

(b) An environmental review conducted pursuant to subsection (1) may include a review of actual or potential impacts beyond Montana's borders if it is conducted by:

(i) the department of fish, wildlife, and parks for the management of wildlife and fish;

(ii) an agency reviewing an application for a project that is not a state-sponsored project to the extent that the review is required by law, rule, or regulation; or

(iii) by a state agency and a federal agency to the extent the review is required by the federal agency.

~~(2)~~*(3)* The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3)~~*(4)* (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the

decision. Except as provided in subsection ~~(3)(b)~~ *(4)(b)*, in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. ~~A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.~~ A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its ~~findings of fact and administrative decision~~ *environmental review document* before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. ~~The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.~~

~~(4)~~*(5)* To the extent that the requirements of ~~subsections~~ *subsection* (1)(b)(iv)(C)(I) ~~and (1)(b)(iv)(C)(III)~~ are inconsistent with federal requirements, the requirements of ~~subsections~~ *subsection* (1)(b)(iv)(C)(I) ~~and (1)(b)(iv)(C)(III)~~ do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.

~~(5)~~*(6)* (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection ~~(5)~~ *(6)* prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

~~(6)~~*(7)* (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ *(7)(a)(ii)* must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ *(7)(a)* involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(d) The remedy in any action brought for failure to comply with or for inadequate compliance with a requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the environmental review conducted pursuant to subsection (1).

(e) A permit, license, lease, or other authorization issued by an agency is valid and may not be enjoined, voided, nullified, revoked, modified, or suspended pending the completion of an environmental review that may be remanded by a court.

~~(7)~~*(8)* The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

~~(8)~~*(9)* A project sponsor may request a review of the significance determination or recommendation made under subsection ~~(7)~~ *(8)* by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 3. Section 75-1-203, MCA, is amended to read:

"75-1-203. Fee schedule — maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule that may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of ~~$2,500~~ *$2,501* to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus 1/2 of 1% of any estimated cost over $20 million and up to $100 million, plus 1/4 of 1% of any estimated cost over $100 million and up to $300 million, plus 1/8 of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities. The estimated cost must be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years.

(5) In calculating fees under this section, the agency may not include in the estimated project cost the project sponsor's property or other interests already owned by the project sponsor at the time the application is submitted. Any fee assessed may be based only on the projected cost of acquiring all of the information and data needed for the environmental impact statement."

Section 4. Section 75-1-208, MCA, is amended to read:

"75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(i) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and

(iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under ~~75-1-201(1)(b)(iv)(C)(III) or (8)~~ *75-1-201(9)* or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at

its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, ~~consider~~ *evaluate* the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures."

Section 5. Section 75-1-220, MCA, is amended to read:

"75-1-220. Definitions. For the purposes of this part, the following definitions apply:

(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.

~~(1)~~*(2)* "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in 2-15-3402;

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

~~(2)~~*(3)* "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

~~(3)~~*(4)* "Cumulative impacts" means the collective impacts on the human environment *within the borders of Montana* of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

~~(4)~~*(5)* "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment *within the borders of Montana* as required under this part.

~~(5)~~*(6)* "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 329).

~~(6)~~*(7)* "Public scoping process" means any process to determine the scope of an environmental review.

(8) (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection (8)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or

(iii) except as provided in subsection (8)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

(b) The term does not include:

(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:

(A) department of environmental quality pursuant to Titles 75, 76, or 82;

(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or

(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies."

Section 6. Coordination instruction. If [this act] is passed and approved and Senate Bill No. 317 is not passed and approved or if both [this act] and Senate Bill No. 317 are passed and approved, then Senate Bill No. 317 is void, the amendments to 75-1-201 contained in [section 2 of this act] are void, and 75-1-201 must be amended as follows:

"**75-1-201. General directions — environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection (2)~~ *subsections (2) and (3)*, shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking *for a state-sponsored project* that may have an impact on the *Montana* human environment *by projects in Montana*; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) ~~through (1)(b)(iv)(C)(III)~~ *and (1)(b)(iv)(C)(II)* and, if requested by the project sponsor or if determined by the agency to be necessary, subsection ~~(1)(b)(iv)(C)(IV)~~ *(1)(b)(iv)(C)(III)*;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking *for state-sponsored projects*, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment *in Montana* are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment *in Montana* a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse ~~environmental~~ effects *on Montana's environment* that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

~~(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.~~

~~(IV)~~*(III)* the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the *Montana* human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources~~;~~. *If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a specific course of action.*

(vi) recognize the ~~national and~~ *potential* long-range character of environmental ~~problems~~ *impacts in Montana* and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality of ~~the world~~ *Montana's* environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of ~~the~~ *Montana's* environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the *legislature and the* environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise

with respect to any environmental impact involved *in Montana* and with any *Montana* local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency *in Montana* with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature.

(b) An environmental review conducted pursuant to subsection (1) may include a review of actual or potential impacts beyond Montana's borders if it is conducted by:

(i) the department of fish, wildlife, and parks for the management of wildlife and fish;

(ii) an agency reviewing an application for a project that is not a state-sponsored project to the extent that the review is required by law, rule, or regulation; or

(iii) a state agency and a federal agency to the extent the review is required by the federal agency.

~~(2)~~*(3)* The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.~~

~~(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court~~

~~considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.~~

~~(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.~~

~~(5)~~*(4)* (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection ~~(5)~~ *(4)* prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

~~(6)~~*(5)* (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ *(5)(a)(ii)* must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ *(5)(a)* involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(6) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to the court the certified record of its decision at issue, and except as provided in subsection (6)(b), the person challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the record.

(ii) Except as provided in subsection (6)(b), in a challenge to the agency's decision or the adequacy of an environmental review, a court may not consider any information, including but not limited to an issue, comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the

agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

(iii) Except as provided in subsection (6)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

(iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the agency's decision.

(b) (i) When a party challenging the decision or the adequacy of the environmental review or decision presents information not in the record certified by the agency, the challenging party shall certify under oath in an affidavit that the information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

(ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to the agency for the agency's consideration and an opportunity to modify its decision or environmental review before the court considers the evidence as a part of the administrative record under review.

(iii) If the court finds that the information in the affidavit does not meet the requirements of subsection (6)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its decision.

(c) The remedy in any action brought for failure to comply with or for inadequate compliance with a requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the environmental review conducted pursuant to subsection (1).

(d) A permit, license, lease, or other authorization issued by an agency is valid and may not be enjoined, voided, nullified, revoked, modified, or suspended pending the completion of an environmental review that may be remanded by a court.

(e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the state as a matter of right if the individual or entity has not been named as a defendant.

(f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3.

(7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental review or any severable portion of an environmental review within the state's jurisdiction that is being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National Environmental Policy Act.

~~(7)~~*(8)* The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

~~(8)~~*(9)* A project sponsor may request a review of the significance determination or recommendation made under subsection ~~(7)~~ *(8)* by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 7. Coordination instruction. If [this act] is passed and approved and Senate Bill No. 317 is not passed and approved or if both [this act] and Senate Bill No. 317 are passed and approved, then Senate Bill No. 317 is void, the amendments to 75-1-201 contained in [section 2 of this act] are void, and 75-1-201 must be amended as follows:

"**75-1-201. General directions — environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the state, except the legislature and except as provided in ~~subsection (2)~~ *subsections (2) and (3)*, shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking *for a state-sponsored project* that may have an impact on the *Montana* human environment *by projects in Montana*; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) ~~through (1)(b)(iv)(C)(III)~~ *and (1)(b)(iv)(C)(II)* and, if requested by the project sponsor or if determined by the agency to be necessary, subsection ~~(1)(b)(iv)(C)(IV)~~ *(1)(b)(iv)(C)(III)*;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking *for state-sponsored projects*, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment *in Montana* are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment *in Montana* a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse ~~environmental~~ effects *on Montana's environment* that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

~~(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.~~

~~(IV)~~*(III)* the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the *Montana* human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(G) the customer fiscal impact analysis, if required by 69-2-216; and

(H) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources~~;~~. *If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. Neither the alternatives analysis nor the resulting recommendations bind the project sponsor to take a recommended course of action, but the project sponsor may agree pursuant to subsection (4)(b) to a specific course of action.*

(vi) recognize the ~~national and~~ *potential* long-range character of environmental ~~problems~~ *impacts in Montana* and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize ~~national~~ cooperation in anticipating and preventing a decline in the quality of ~~the world~~ *Montana's* environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of ~~the~~ *Montana's* environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the *legislature and the* environmental quality council established by 5-16-101;

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved *in Montana* and with any *Montana* local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and obtain comments from any state agency *in Montana* with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) (a) Except as provided in subsection (2)(b), an environmental review conducted pursuant to subsection (1) may not include a review of actual or potential impacts beyond Montana's borders. It may not include actual or potential impacts that are regional, national, or global in nature.

(b) An environmental review conducted pursuant to subsection (1) may include a review of actual or potential impacts beyond Montana's borders if it is conducted by:

(i) the department of fish, wildlife, and parks for the management of wildlife and fish;

(ii) an agency reviewing an application for a project that is not a state-sponsored project to the extent that the review is required by law, rule, or regulation; or

(iii) a state agency and a federal agency to the extent the review is required by the federal agency.

~~(2)~~*(3)* The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3) (a) In any action challenging or seeking review of an agency's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue relating to the adequacy or content of the agency's environmental review document or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of any action challenging or seeking review of the agency's decision.~~

~~(b) When new, material, and significant evidence or issues relating to the adequacy or content of the agency's environmental review document are~~

~~presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content of the agency's environmental review document back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence or issue relating to the adequacy or content of the agency's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the agency's environmental review document may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.~~

~~(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state agency to comply with the requirements of the National Environmental Policy Act.~~

~~(5)~~*(4)* (a) The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection ~~(5)~~ *(4)* prevents a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

~~(6)~~*(5)* (a) (i) A challenge to an agency action under this part may only be brought against a final agency action and may only be brought in district court or in federal court, whichever is appropriate.

(ii) Any action or proceeding challenging a final agency action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ *(5)(a)(ii)* must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection ~~(6)(a)~~ *(5)(a)* involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(6) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to the court the certified record of its decision at issue, and except as provided in subsection

(6)(b), the person challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the record.

(ii) Except as provided in subsection (6)(b), in a challenge to the agency's decision or the adequacy of an environmental review, a court may not consider any information, including but not limited to an issue, comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

(iii) Except as provided in subsection (6)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious or was otherwise not in accordance with law.

(iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the agency's decision.

(b) (i) When a party challenging the decision or the adequacy of the environmental review or decision presents information not in the record certified by the agency, the challenging party shall certify under oath in an affidavit that the information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

(ii) If upon reviewing the affidavit the court finds that the proffered information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to the agency for the agency's consideration and an opportunity to modify its decision or environmental review before the court considers the evidence as a part of the administrative record under review.

(iii) If the court finds that the information in the affidavit does not meet the requirements of subsection (6)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its decision.

(c) (i) The remedies provided in this section for successful challenges to a decision of the agency or the adequacy of the statement are exclusive.

(ii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent injunction, or other equitable relief may not enjoin the issuance or effectiveness of a license or permit or a part of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction, a permanent injunction, or other equitable relief, that the:

(A) party requesting the relief will suffer irreparable harm in the absence of the relief;

(B) issuance of the relief is in the public interest. In determining whether the grant of the relief is in the public interest, a court:

(I) may not consider the legal nature or character of any party; and

(II) shall consider the implications of the relief on the local and state economy and make written findings with respect to both.

(C) relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and the irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the extent possible, that the project or as much of the project as possible can go forward while also providing the relief to which the applicant has been determined to be entitled.

(d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the case. If the party seeking an injunction or a temporary restraining order objects to the amount of the written undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit with the court that states the party's income, assets, and liabilities in order to facilitate the court's consideration of the amount of the written undertaking that is required. The affidavit must be served on the party enjoined.

(e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the state as a matter of right if the individual or entity has not been named as a defendant.

(f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3.

(7) For purposes of judicial review, to the extent that the requirements of this section are inconsistent with the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental review or any severable portion of an environmental review within the state's jurisdiction that is being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National Environmental Policy Act.

~~(7)~~*(8)* The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

~~(8)~~*(9)* A project sponsor may request a review of the significance determination or recommendation made under subsection ~~(7)~~ *(8)* by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208."

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) The amendments to 75-1-201 contained in [section 7] are effective on the date that the contingency provided for in [section 11] occurs.

Section 10. Applicability. [This act] applies to an environmental assessment and an environmental impact statement begun on or after [the effective date of this act].

Section 11. Termination — contingency. If either subsection (6)(c) or (6)(d) of 75-1-201, as included in [section 6], is invalidated or found to be unconstitutional by the Montana supreme court, then the amendments to 75-1-201 contained in [section 6] terminate on the date of the invalidation or the finding of unconstitutionality.

Approved May 12, 2011

CHAPTER NO. 397

[SB 241]

AN ACT REVISING THE FORMULA FOR DETERMINING MEDICAID REIMBURSEMENT RATES FOR PHYSICIANS; REVISING DEFINITIONS; AMENDING SECTIONS 53-6-124 AND 53-6-125, MCA; REPEALING SECTION 53-6-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-124, MCA, is amended to read:

"53-6-124. Definitions. As used in ~~53-6-124 through~~ *53-6-125,* 53-6-127, *and this section,* the following definitions apply:

(1) "Conversion factor" means the ~~average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance to the most beneficiaries within the state in January 2007 who use the resource-based relative value scale to determine fees for covered services. This January 2007 conversion factor is applicable for state fiscal years 2008, 2009, 2010, 2011, 2012, and 2013. In state fiscal year 2014 and for each state fiscal year thereafter, the conversion factor is the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance to the most beneficiaries within the state who use the resource-based relative value scale to determine fees for covered services~~ *dollar value that is multiplied by the appropriate relative value unit to calculate a price for a service provided by a physician*.

(2) "Department" means the department of public health and human services.

(3) "Medicaid" means the Montana medical assistance program established under Title 53, chapter 6.

(4) "Physician" has the meaning provided in 37-3-102.

(5) "Policy adjuster" means a factor by which the fee determined under 53-6-125 is multiplied to increase the fee paid by medicaid for certain categories of services.

(6) "Relative value unit" means a numerical value assigned in the resource-based relative value scale to each procedure code used to bill for services provided by a physician.

(7) "Resource-based relative value scale" means the medicare resource-based relative value scale contained in the physician's medicare fee schedule adopted by the centers for medicare and medicaid services of the U.S. department of health and human services."

Section 2. Section 53-6-125, MCA, is amended to read:

"53-6-125. Physician services reimbursement. (1) The fee for a covered service provided by a physician under the medicaid program is determined by multiplying ~~a percentage of~~ the conversion factor times the relative value unit for that service times any applicable policy adjusters.

(2) ~~(a) For state fiscal years 2008 and 2009, the percentage of the conversion factor will be determined by the appropriation of the 2007 legislature for physician reimbursement.~~

~~(b) For state fiscal year 2010, the 2009 percentage of the conversion factor will be increased by a minimum of 6%.~~

~~(c) For state fiscal year 2011, the 2010 percentage of the conversion factor will be increased by a minimum of 6%.~~

~~(d) For state fiscal year 2012, the 2011 percentage of the conversion factor will be increased by a minimum of 6%.~~

~~(e) For state fiscal year 2013, the 2012 percentage of the conversion factor will be increased by a minimum of 6%.~~

(a) For state fiscal years 2011 through 2013, the conversion factor is $40.09. The conversion factor may be adjusted by the department in order to maintain reimbursement, at a minimum, at the fiscal year 2010 reimbursement rate.

~~(f)~~*(b)* For state fiscal year 2014 and for each *subsequent* state fiscal year ~~thereafter, the percentage of~~, the conversion factor ~~will~~ *must* be ~~equivalent~~ *increased*, at a minimum, ~~to state fiscal year 2013~~ *by the same percentage increase as the consumer price index for medical care for the previous year, as calculated by the bureau of labor statistics of the United States department of labor*."

Section 3. Repealer. The following section of the Montana Code Annotated is repealed:

53-6-126. Providing conversion factors to department.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2010.

Approved May 12, 2011

CHAPTER NO. 398

[SB 292]

AN ACT DEFINING "IN SITU COAL GASIFICATION"; DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES FOR IN SITU COAL GASIFICATION; CLARIFYING THAT INJECTIONS INTO GROUNDWATER FOR IN SITU COAL GASIFICATION ARE NOT POLLUTION; AND AMENDING SECTIONS 75-5-103 AND 82-4-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Rulemaking — in situ coal gasification. (1) Within 1 year of [the effective date of this act] and in accordance with subsection (3), the board shall adopt rules necessary to regulate underground mining using in situ coal gasification.

(2) Unless required by this part, the board may not adopt a rule to regulate in situ coal gasification that is more stringent than the comparable federal regulations or guidelines that address the same circumstances.

(3) The board shall solicit, document, consider, and address comments from the board of oil and gas conservation provided for in 2-15-3303 in developing rules pursuant to subsection (1).

Section 2. Section 75-5-103, MCA, is amended to read:

"75-5-103. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality standards for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(22) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of

pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of temporary nutrient criteria, and the implementation of those standards and criteria together with associated economic impacts.

(23) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(24) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(26) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(27) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(29) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

~~(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.~~

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection (29)(b)(iii) does not require a mixing zone.

(30) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(32) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.

(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not

limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

75-5-103. (Effective on occurrence of contingency) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(2) (a) "Base numeric nutrient standards" means numeric water quality standards for nutrients in surface water that are adopted to protect the designated uses of a surface water body.

(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(5) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(6) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(7) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(10) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(11) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

(12) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(13) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(14) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(15) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(22) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of temporary nutrient criteria, and the implementation of those standards and criteria together with associated economic impacts.

(23) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(24) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(25) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(26) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(27) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(28) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(29) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

~~(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.~~

~~(c) Contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1, is not pollution and does not require a mixing zone.~~

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections (29)(b)(iii) and (29)(b)(iv) does not require a mixing zone.

(30) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(31) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(32) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(33) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(34) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(35) "Temporary nutrient criteria" means numeric permit limits for nutrients that are based on a determination that the base numeric nutrient standards cannot be achieved by a particular point source discharger due to economic impacts or the limits of technology.

(36) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(37) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(38) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(39) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(40) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(41) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(42) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

Section 3. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance *as defined in 82-4-203* is protected; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

(5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

(6) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

(7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(8) "Board" means the board of environmental review provided for in 2-15-3502.

(9) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

(10) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(11) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated

with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(12) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(13) "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(14) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

(15) "Department" means the department of environmental quality provided for in 2-15-3501.

(16) "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(17) "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

(18) "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

(19) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(20) "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(21) "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(22) "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

(23) "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

(24) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

(25) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm

to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(26) "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(27) (a) "In situ coal gasification" means a method of in-place coal mining where limited quantities of overburden are disturbed to install a conduit or well and coal is mined by injecting or recovering a liquid, solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

(b) In situ coal gasification does not include the storage of carbon dioxide in a geologic storage reservoir, the primary or enhanced recovery of naturally occurring oil and gas, or any related process regulated by the board of oil and gas conservation pursuant to Title 82, chapter 11.

~~(27)~~*(28)* "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

~~(28)~~*(29)* "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

~~(29)~~*(30)* "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

~~(30)~~*(31)* "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

~~(31)~~*(32)* "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(32)~~*(33)* "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(33)~~*(34)* "Mineral" means coal and uranium.

~~(34)~~*(35)* "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(35)~~*(36)* "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

(c) operating a coal preparation plant; or

(d) uranium mining using in situ methods.

~~(36)~~*(37)* "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

~~(37)~~*(38)* "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

~~(38)~~*(39)* "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(39)~~*(40)* "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(40)~~*(41)* "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(41)~~*(42)* "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(42)~~*(43)* "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

(44) "Recovery fluid" means any material that flows or moves, whether in semisolid, liquid, sludge, gas, or some other form or state, used to dissolve, leach, gasify, or extract coal.

~~(43)~~*(45)* "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

~~(44)~~*(46)* "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

~~(45)~~*(47)* "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(46)~~*(48)* "Residential" means land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

~~(47)~~*(49)* "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(48)~~*(50)* (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(49)~~*(51)* "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(50)~~*(52)* "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

~~(51)~~*(53)* "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(52)~~*(54)* "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

~~(53)~~*(55)* "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(54)~~*(56)* "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(55)~~*(57)* "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(56)~~*(58)* "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 1].

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 12, 2011

CHAPTER NO. 399

[SB 295]

AN ACT REVISING THE MANNER OF APPRAISING CERTAIN PROPERTIES FOR PROPERTY TAX PURPOSES; ALLOWING ANNUAL INFORMAL REVIEWS OF CLASSIFICATION AND APPRAISAL FOR AGRICULTURAL, RESIDENTIAL AND COMMERCIAL, AND FOREST PROPERTY; REQUIRING CERTAIN INFORMATION BE PROVIDED TO AN OBJECTOR FOR USE IN INFORMAL REVIEWS; PROHIBITING AN INCREASE IN THE VALUE OF PROPERTY THROUGH AN INFORMAL REVIEW EXCEPT DUE TO A PHYSICAL CHANGE IN A PROPERTY OR A

MISTAKE IN A PROPERTY DESCRIPTION; PROVIDING THAT THE CONSIDERATION PAID ON A MORTGAGE FORECLOSURE MUST BE DISCLOSED IN A REALTY TRANSFER CERTIFICATE; REQUIRING THE USE OF THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE; REQUIRING THAT ERRONEOUS CALCULATION ERRORS MUST BE CORRECTED FOR ALL AFFECTED PROPERTIES; AMENDING SECTIONS 15-7-102, 15-7-307, 15-8-111, AND 15-8-601, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) Except as provided in 15-7-138, the department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemptions under 15-6-222 or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under 15-6-134, the extended property tax assistance program under 15-6-193, the disabled or deceased veterans' residence exemption under 15-6-211, and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341;

(ii) the total amount of mills levied against the property in the prior year; and

(iii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as

provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) *(a)* If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department~~,~~ on forms provided by the department for that purpose~~,~~. *For property other than class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection must be submitted* within 30 days after receiving the notice of classification and appraisal from the department. *For class three property described in 15-6-133, class four property described in 15-6-134, and class ten property described in 15-6-143, the objection may be made at any time but only once each valuation cycle.*

(b) For properties valued using sales price or the capitalization of net income method as an indication of value, the form must include a provision that the objector agrees to confidentiality requirements for receipt of comparable sales data from information received from realty transfer certificates under 15-7-308. Within 4 weeks of submitting an objection, if the objection relates to residential and commercial property, the department shall provide the objector by posted mail or e-mail, unless the objector waives receiving the information, with:

(i) data from comparable sales used by the department to value the property;

(ii) the methodology and sources of data used by the department in the valuation of the property; and

(iii) if the department uses a blend of evaluations developed from various sources, the reasons that the methodology was used.

(c) For properties valued using the capitalization of net income method as one approximation of market value, notice must be provided that the taxpayer will be given a form to acknowledge confidentiality requirements for the receipt of all aggregate model output that the department used in the valuation model for the property.

(d) The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review.

(e) After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. *The department may not determine an appraised value that is higher than the value that was the subject of the objection unless the reason for an increase was the result of a physical change in the property or caused by an error in the description of the property that is kept by the department and used for calculating the appraised value.* In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 2. Section 15-7-307, MCA, is amended to read:

"15-7-307. Certificate — exceptions. The certificate required by this part applies to all transfers. However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred:

(1) an instrument recorded prior to July 1, 1975;

(2) the sale of agricultural land when the land is used for agricultural purposes;

(3) the sale of timberland when the land is used for producing timber;

(4) a transfer by the United States, this state, or any instrumentality, agency, or subdivision of the United States or this state;

(5) an instrument that (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;

(6) a transfer pursuant to a court decree;

(7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;

(8) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(9) a transfer of decedents' estates;

(10) a transfer of a gift;

(11) a transfer between husband and wife or parent and child with only nominal actual consideration for the transfer;

(12) an instrument the effect of which is to transfer the property to the same party or parties;

(13) a sale for delinquent taxes or assessments, *a* sheriff's sale, *or a sale pursuant to a* bankruptcy ~~action~~ *court order*~~, or mortgage foreclosure~~;

(14) a transfer made in contemplation of death."

Section 3. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization-of-net-income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

(d) Except as provided in subsection ~~(3)~~ *(4)*, the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) In valuing class four residential and commercial property described in 15-6-134, the department shall conduct the appraisal following the appropriate uniform standards of professional appraisal practice for mass appraisal promulgated by the appraisal standards board of the appraisal foundation. In valuing the property, the department shall use information available from any source considered reliable. Comparable properties used for valuation must represent similar properties within an acceptable proximity of the property being valued.

~~(3)~~*(4)* The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide;

(c) for condominium property, the department shall establish the value as provided in subsection ~~(4)~~ *(5)*; and

(d) as otherwise authorized in Titles 15 and 61.

~~(4)~~*(5)* (a) Subject to subsection ~~(4)(c)~~ *(5)(c)*, if sufficient, relevant information on comparable sales is available, the department shall use the comparable sales method to appraise residential condominium units. Because the undivided interest in common elements is included in the sales price of the condominium

units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(b) Subject to subsection ~~(4)(c)~~ *(5)(c)*, if sufficient, relevant information on income is made available to the department, the department shall use the capitalization-of-net-income method to appraise commercial condominium units. Because the undivided interest in common elements contributes directly to the income-producing capability of the individual units, the department is not required to separately allocate the value of the common elements to the individual units being valued.

(c) If sufficient, relevant information on comparable sales is not available for residential condominium units or if sufficient, relevant information on income is not made available for commercial condominium units, the department shall value condominiums using the construction-cost method. When using the construction-cost method, the department shall determine the value of the entire condominium project and allocate a percentage of the total value to each individual unit. The allocation is equal to the percentage of undivided interest in the common elements for the unit as expressed in the declaration made pursuant to 70-23-403, regardless of whether the percentage expressed in the declaration conforms to market value.

~~(5)~~*(6)* For purposes of taxation, assessed value is the same as appraised value.

~~(6)~~*(7)* The taxable value for all property is the percentage of market or assessed value established for each class of property.

~~(7)~~*(8)* The assessed value of properties in 15-6-131 through 15-6-134, 15-6-143, and 15-6-145 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-222.

(e) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(f) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-205.

~~(8)~~*(9)* Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

Section 4. Section 15-8-601, MCA, is amended to read:

"15-8-601. Assessment revision — conference for review. (1) (a) Except as provided in subsection (1)(b), whenever the department discovers that

any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(c) If an erroneous assessment is due to a calculation error by the department, the department shall revise the assessment of like properties that were also erroneously assessed using the same calculation.

(2) When the department proposes to revise the statement reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. Revised assessments of centrally assessed property are subject to review pursuant to 15-1-211.

(3) (a) Notice of revised assessment pursuant to this section must be made by the department by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. If the property is locally assessed, the notice must include the opportunity for a conference on the matter, at the request of the person interested, within 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment revision review conference, and the minutes are public records.

(c) Following an assessment revision review conference or expiration of the opportunity for a conference, the department shall order an assessment that it considers proper. Any party to the conference aggrieved by the action of the department or a taxpayer who does not request a conference may appeal to the county tax appeal board within 30 days of receipt of the revised assessment or the department's assessment made pursuant to the conference.

(4) The department shall enter in the property tax record all changes and corrections made by it."

Section 5. Effective date. [This act] is effective July 1, 2012.

Approved May 12, 2011

CHAPTER NO. 400

[SB 348]

AN ACT CLARIFYING THE FUNDING OF WOLF MANAGEMENT; AUTHORIZING THE USE OF STATE FUNDS FOR COLLARING AND CONTROL OF WOLVES; AMENDING SECTION 87-5-132, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the gray wolf was listed as an endangered species under the Endangered Species Act (ESA) in 1973; and

WHEREAS, gray wolves were reintroduced in Yellowstone National Park and central Idaho in 1995 and 1996 by the United States Fish and Wildlife Service (USFWS) to speed up recovery of the gray wolf population in the Northern Rocky Mountain region; and

WHEREAS, the biological requirement established by the USFWS for the recovery of the gray wolf population in the Northern Rocky Mountains is a minimum of 30 breeding pairs and 300 wolves in Montana, Idaho, and Wyoming combined or effectively 10 breeding pairs and 100 wolves per state; and

WHEREAS, the USFWS approved the Montana Gray Wolf Conservation and Management Plan in January 2004, under which Montana agreed to use adaptive management strategies to ensure its portion of the biological recovery goal is met; and

WHEREAS, the gray wolf population in Montana, Idaho, and Wyoming achieved the biological requirements of 30 breeding pairs and 300 wolves in 2002; and

WHEREAS, the most recent data available show that at the end of 2009, the estimated minimum number of wolves in Montana was 524 wolves with an estimated minimum of 37 breeding pairs in Montana; and

WHEREAS, the final environmental impact statement prepared by the Montana Department of Fish, Wildlife, and Parks (MDFWP) for the Montana Gray Wolf Conservation and Management Plan, submitted to the USFWS in October 2003, estimated that MDFWP's required budget for the wolf management alternative that was ultimately selected would be $924,739 to $1,062,399, of which 90% would be provided by the federal government under Section 6 of the ESA and 10% would be the responsibility of Montana; and

WHEREAS, the 90%-10% cost share was never implemented because the USFWS allocated funding directly to MDFWP rather than it being necessary for MDFWP to request funding under Section 6 of the ESA; and

WHEREAS, the USFWS allocated an average of $573,000 annually to Montana for wolf management under a 5-year contract that expired June 30, 2010; and

WHEREAS, that annual allocation was far below the estimate included in the final environmental impact statement; and

WHEREAS, under MDFWP's new contract for July 1, 2010, through June 30, 2015, the USFWS allocates only $626,000 to Montana for the entire 5-year period.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-132, MCA, is amended to read:

"87-5-132. Use of radio-tracking collars for monitoring wolf packs. (1) As part of a wolf management plan approved by the department, a radio-tracking collar *or a collar that uses global positioning system technology* must be attached to at least one wolf in each wolf pack that is active near livestock or near a population center in areas where depredations are chronic or likely.

(2) The department ~~shall~~ *may* expend ~~only the~~ *state and* federal funds for wolf management purposes to fulfill the requirements of this section.

(3) The department may collaborate and cooperate with other state and federal agencies to fulfill the requirements of this section."

Section 2. Funding for wolf management. (1) The department shall allocate $900,000 annually for wolf management.

(2) For the purposes of this section, the term "management" has the same meaning provided in 87-5-102 and includes:

(a) wolf collaring conducted pursuant to 87-5-132; and

(b) lethal action conducted pursuant to 87-1-217 to take problem wolves that attack livestock.

(3) Not more than 25% of the total funding allocated under this section may be used for administrative costs.

(4) Pursuant to 87-1-201, the department may allocate funds from any source to meet the requirements of this section.

(5) The department may contract with the United States department of agriculture wildlife services and county governments for the purposes of this section.

Section 3. Appropriation. (1) The following money is appropriated to the department of fish, wildlife, and parks from the general license account for the purposes established in [section 1]:

Fiscal year 2012	$274,000
Fiscal year 2013	$274,000

(2) The following money is appropriated to the department of fish, wildlife, and parks from federal funds received from the United States fish and wildlife service for wolf management and the purposes established in [section 1]:

Fiscal year 2012	$626,000
Fiscal year 2013	$626,000

(3) The department may not expend more than 25% of the total appropriation in each fiscal year on administrative costs.

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 87, chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2011.

Approved May 12, 2011

CHAPTER NO. 401

[SB 409]

AN ACT GENERALLY REVISING STATE LAND CABIN SITE LAWS; AUTHORIZING AN ALTERNATIVE RENTAL MARKET VALUATION COMPETITIVE BID PROCESS; AUTHORIZING THE SALE OF STATE-LEASED CABIN OR HOME SITES OR CITY OR TOWN LOTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 77-1-208, AND 77-2-318, MCA; REPEALING SECTION 77-2-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Alternative rental market valuation — open competitive bidding process. (1) (a) In order to establish full rental market value, the board shall establish an open competitive bidding process for all vacant cabin site properties. Except as provided in subsection (1)(c), the minimum bid must be initially set at 2% of the most recent cabin site appraisal value as determined by the department of revenue.

(b) (i) The board shall, within 180 days from the date that a cabin site property becomes vacant, put that site up for open competitive bidding.

(ii) In providing notice of the open competitive bidding process, the board shall notify prospective bidders that a bidder other than the current lessee or licensee is obligated to purchase the improvements pursuant to 77-1-208(4) if that bidder offers the highest bid.

(iii) A lease or license term for a bidder that offers the highest bid and acquires a lease or license must be for a minimum period of 15 years.

(iv) The fee for each subsequent year must be adjusted using the average annual consumer price index as published by the U.S. bureau of labor statistics.

(c) If pursuant to subsection (1)(a) the board does not receive the minimum bid within 180 days, the board may reduce the bid incrementally until a bid is received.

(2) Subject to [section 2], a lessee or licensee may voluntarily put the lessee's or licensee's cabin site up for open competitive bid as provided in subsection (1) of this section. A lessee choosing to voluntarily place a cabin site lease up for competitive bid is not entitled to a preference right to meet the high bid. Prior to the open competitive bidding process, the board shall follow the procedures provided in 77-1-208(3) to establish the market value of improvement.

(3) By January 1, 2012, the board shall adopt rules to ensure that:

(a) the open competitive bidding process authorized pursuant to this section is orderly and consistent with the board's constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for competitive bid at any given time is consistent with the board's constitutional fiduciary duty of attaining full rental market value; and

(b) the information used to determine the rental market percentage pursuant to this section is posted on the department's website and periodically updated.

Section 2. Rental market valuation lease program — transition. (1) (a) Subject to subsection (2), the board shall offer all existing cabin site lessees or licensees the option of 15-year lease contracts based on the rental market valuation process provided in [section 1].

(b) (i) At least three winning bids made pursuant to [section 1] must be referenced against the most recent appraised value of the cabin site property by the department of revenue in order to establish a rental market percentage. All rental market percentages that have been determined pursuant to [section 1] must be grouped together by geographic location and averaged together to determine a final rental market percentage for each geographic location. If there are not three winning bids in any one geographic location, then three bids from similar locations may be averaged to establish a rental market percentage.

(ii) The final rental market percentage determined for each geographic location pursuant to this subsection (1)(b) must be applied to the department of revenue's most recent appraised value for each cabin site property in that location that did not go through the open competitive bidding process to determine the initial lease amount for each cabin site property.

(c) If no properties in a particular geographic location go through an open competitive bidding process, the most applicable comparable location, as determined based on professional appraisal standards, must be chosen and the final rental market percentage must be applied as provided in subsection (1)(b).

(2) The lease amount for the first year must be set as provided in subsection (1). The annual lease rental fee for each subsequent year must be adjusted using the average annual consumer price index as published by the U.S. bureau of labor statistics.

(3) By January 1, 2012, the board shall adopt rules for the orderly transition for cabin site lessees or licensees who have chosen the lease option pursuant to subsection (1) that is consistent with the board's constitutional fiduciary duty of attaining full rental market value.

(4) Nothing in this chapter prevents:

(a) an existing lessee or licensee from completing or renewing the lessee's or licensee's current lease or license based on existing methods of valuation as provided in 77-1-208; or

(b) a lessee or licensee that has abandoned a lease or license from bidding on the abandoned lease or license.

Section 3. Section 77-1-208, MCA, is amended to read:

"77-1-208. Cabin site licenses and leases — method of establishing value. (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on *one of the following methods:*

(a) appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 15.

(b) establishing full rental market value through the use of an open competitive bidding process as provided in [section 1].

(2) A current licensee or lessee may complete or renew the licensee's or lessee's current lease based on valuation methods provided in subsection (1)(a), or at the end of the lease or license contract, the licensee or lessee may choose to proceed with the valuation option provided in subsection (1)(b).

~~(2)~~*(3)* The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

~~(3)~~*(4) (a)* ~~The~~ *Subject to subsection (4)(b), the* board shall follow the procedures set forth in 77-6-302, 77-6-303, and 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.

(b) (i) A subsequent licensee or lessee may not take occupancy unless the license or lease contract and the sale of improvements have been finalized. If a winning bidder has been identified and the transaction for the sale of the improvements is in process, the current lessee shall pay a prorated lease fee based on the current lease until the date that the sale of the improvements is finalized.

(ii) The valuation of improvements must be applicable to residential property inclusive of all improvements.

(iii) A licensee or lessee may assign or rent any improvements.

(iv) Within 3 years of canceling, terminating, or abandoning a cabin site lease, the owner of the improvements shall sell the improvements, remove the

improvements, or transfer ownership of the improvements to the state. If ownership is transferred to the state, proceeds from the sale of the improvements must be paid to the owner who transferred the improvements. The board shall set the conditions of the sale of transferred improvements in order to sell the improvements in an expedient manner."

Section 4. Section 77-2-318, MCA, is amended to read:

"77-2-318. Sale of leased cabin or home sites or city or town lots. (1) At the request of the lessee and if consistent with the orderly development and management of state lands, the board may make available for sale, in the manner provided in this part, any leased cabin or home site or city or town lot that ~~was~~ *is* under lease ~~on October 1, 1989~~ *during the 15th year of any 15-year lease that was established through the open competitive bidding process or through the transition process provided for in [section 2] or subsection (4) of this section*.

(2) The lessee requesting the sale shall have prepared a current certificate of survey for the property. The cost of preparation of the certificate of survey must be included in the settlement for improvements, as provided for in 77-2-325, if a person other than the lessee is the purchaser.

(3) The sale of a lease is exempt from the subdivision laws, except that the development of any new, replacement, or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

~~(4) The sale of a leased cabin or home site or city or town lot under 77-2-318 through 77-2-320 must be completed no later than 10 years after October 1, 1989 . A lessee may request a lease sale at any time during the 10-year period. Upon request, the board may grant a lessee with a disability or a lessee 65 years of age or older an additional 10-year period to request a sale of leased land.~~

(4) By January 1, 2012, the board shall adopt rules to ensure that the sales process authorized pursuant to this section is orderly and consistent with its constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for sale at any given time is consistent with the board's constitutional duty of attaining full market value.

(5) Upon a sale of leased land, the department shall, upon compliance with 77-2-101 through 77-2-106, grant a permanent easement across state lands to secure access using current routes."

Section 5. Repealer. The following section of the Montana Code Annotated is repealed:

77-2-319. Conservation easement for certain sales.

Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77, chapter 1, part 2, apply to [sections 1 and 2].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved May 12, 2011

CHAPTER NO. 402

[SB 125]

AN ACT PROHIBITING MONTANA STATE GOVERNMENT FROM ADMINISTERING FEDERAL HEALTH INSURANCE PURCHASE REQUIREMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative finding — direction to state agencies not to administer health insurance purchase requirement. (1) The legislature finds that the enactment by the U.S. congress of Public Law 111-148 and Public Law 111-152, requiring individuals to purchase health insurance and imposing on certain employers a liability for an assessable payment for not contributing toward employees' health insurance, will cause unneeded expense and inconvenience to individuals without health insurance and to those certain employers.

(2) Notwithstanding the provisions of Title 2, chapter 1, part 4, an agency of this state, as defined in 2-18-101, may not implement or enforce in any way the provisions of Public Law 111-148 and Public Law 111-152 or any federal regulation or policy implementing Public Law 111-148 and Public Law 111-152 that relates to the requirement for individuals to purchase health insurance and maintain minimum essential health insurance coverage.

(3) In addition to the provisions in subsection (2), the prohibition under this section includes:

(a) for the purposes of public employers, a prohibition on requiring any employee as defined in 2-18-701 to obtain or maintain a policy of health insurance to comply with Public Law 111-148 and Public Law 111-152; and

(b) participation by a state official or state employee on a board, a study commission, or a related entity of the national association of insurance commissioners assigned to recommend provisions to implement the individual mandate to purchase health insurance under the federal health care reforms provided in Public Law 111-148 and Public Law 111-152.

(4) This section does not interfere with:

(a) voluntary actions taken by individuals to purchase health insurance or to participate in health insurance exchanges; or

(b) the state requirement to purchase motor vehicle liability insurance as provided in 61-6-301.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, and the provisions of Title 2 apply to [section 1].

Approved May 13, 2011

CHAPTER NO. 403

[SB 207]

AN ACT CLARIFYING THE REGULATION OF BISON; GRANTING RULEMAKING AUTHORITY TO ESTABLISH A PERMIT AND INSPECTION SYSTEM FOR THE TRANSPORTATION OF BISON; PROVIDING DEFINITIONS; AMENDING SECTIONS 81-1-101, 81-2-120, 81-2-121, 81-3-201, 81-4-603, 81-5-101, 85-1-104, AND 87-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Permit and inspection system for transportation of bison. (1) Except as otherwise provided by law, the department shall adopt rules imposing a permit and inspection system for the transportation of bison into and out of counties and into and out of the state for the purposes of tracking movement of animals and collecting per capita assessments.

(2) A person who purposely or knowingly transports bison in violation of rules adopted pursuant to this section is guilty of a misdemeanor and shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both.

Section 2. Section 81-1-101, MCA, is amended to read:

"81-1-101. (Temporary) Definitions. Unless the context requires otherwise, in Title 81, the following definitions apply:

(1) (a) "Bison" means domestic bison or feral bison.

(b) The term does not include:

(i) wild buffalo or wild bison; or

(ii) for the purposes of chapter 9, buffalo.

~~(1)~~*(2)* "Board" means the board of livestock provided for in 2-15-3102, except as provided in Title 81, chapter 23.

~~(2)~~*(3)* "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) "Domestic bison" means a bison owned by a person.

(5) "Feral bison" means a domestic bison or progeny of a domestic bison that has escaped or been released from captivity and is running at large and unrestrained on public or private land.

(6) "Wild buffalo" or "wild bison" means a bison that has not been reduced to captivity and is not owned by a person. (Terminates June 30, 2011—sec. 20, Ch. 361, L. 2009.)

81-1-101. (Effective July 1, 2011) Definitions. Unless the context requires otherwise, in Title 81, the following definitions apply:

(1) (a) "Bison" means domestic bison or feral bison.

(b) The term does not include:

(i) wild buffalo or wild bison; or

(ii) for the purposes of chapter 9, buffalo.

~~(1)~~*(2)* "Board" means the board of livestock provided for in 2-15-3102.

~~(2)~~*(3)* "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) "Domestic bison" means a bison owned by a person.

(5) "Feral bison" means a domestic bison or progeny of a domestic bison that has escaped or been released from captivity and is running at large and unrestrained on public or private land.

(6) "Wild buffalo" or "wild bison" means a bison that has not been reduced to captivity and is not owned by a person."

Section 3. Section 81-2-120, MCA, is amended to read:

"81-2-120. Management of wild buffalo or *wild* bison for disease control. (1) Whenever a publicly owned wild buffalo or *wild* bison from a herd that is infected with a dangerous disease enters the state of Montana on public or private land and the disease may spread to persons or livestock or whenever the presence of wild buffalo or *wild* bison may jeopardize Montana's compliance with other state-administered or federally administered livestock disease control programs, the department may, under a plan approved by the governor, use any feasible method in taking one or more of the following actions:

(a) The live wild buffalo or *wild* bison may be physically removed by the safest and most expeditious means from within the state boundaries, including

but not limited to hazing and aversion tactics or capture, transportation, quarantine, or delivery to a department-approved slaughterhouse.

(b) The live wild buffalo or *wild* bison may be destroyed by the use of firearms. If a firearm cannot be used for reasons of public safety or regard for public or private property, the animal may be relocated to a place that is free from public or private hazards and destroyed by firearms or by a humane means of euthanasia.

(c) The live wild buffalo or *wild* bison may be taken through limited public hunts pursuant to 87-2-730 when authorized by the state veterinarian and the department.

(d) The live wild buffalo or *wild* bison may be captured, tested, quarantined, and vaccinated. Wild buffalo or *wild* bison that are certified by the state veterinarian as brucellosis-free may be:

(i) sold to help defray the costs that the department incurs in building, maintaining, and operating necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or *wild* bison; or

(ii) transferred to qualified tribal entities that participate in the disease control program provided for in this subsection (1)(d). Acquisition of wild buffalo or *wild* bison by a qualified tribal entity must be done in a manner that does not jeopardize compliance with a state-administered or federally administered livestock disease control program. The department may adopt rules consistent with this section governing tribal participation in the program or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control program.

(e) Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or *wild* bison must be deposited in the state special revenue fund to the credit of the department.

(f) Any revenue generated in excess of the costs referred to in subsection (1)(d)(i) must be deposited in the state special revenue fund provided for in 87-1-513(2).

(2) Whenever the department is responsible for the death of a wild buffalo or *wild* bison, either purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery to a department-approved slaughterhouse or slaughter destination.

(3) In disposing of the carcass, the department:

(a) as first priority, may donate a wild buffalo or *wild* bison carcass to a charity or to an Indian tribal organization; or

(b) may sell a wild buffalo or *wild* bison carcass to help defray expenses of the department. If the carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild buffalo or *wild* bison carcass to the state special revenue fund to the credit of the department.

(4) The department may adopt rules with regard to management of publicly owned wild buffalo or *wild* bison that enter Montana on private or public land and that are from a herd that is infected with a contagious disease that may spread to persons or livestock and may jeopardize compliance with other state-administered or federally administered livestock disease control programs."

Section 4. Section 81-2-121, MCA, is amended to read:

"81-2-121. Taking of publicly owned wild buffalo or *wild* bison that are present on private property — notice — supplemental feeding — penalty. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability on a landowner or the agent of a landowner for the taking of a publicly owned wild buffalo or *wild* bison that is suspected of carrying disease and that is present on the landowner's private property and is potentially associating with or otherwise threatening the landowner's livestock if:

(a) the landowner or agent notifies or makes a good faith effort to notify the department in order to allow as much time as practicable for the department to first take or remove the publicly owned wild buffalo or *wild* bison that is present on the landowner's property;

(b) the landowner or agent makes a good faith effort to notify the department that a taking has occurred and to retain all parts for disposal by the department; and

(c) the landowner or agent is not in violation of subsection (2).

(2) A person may not intentionally provide supplemental feed to game animals in a manner that results in artificial concentration of game animals that may potentially contribute to the transmission of disease. A person who violates this subsection is guilty of a misdemeanor and is subject to the penalty provided in 87-1-102(1). This subsection does not apply to supplemental feeding activities conducted by the department for disease control purposes."

Section 5. Section 81-3-201, MCA, is amended to read:

"81-3-201. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector who does not receive a salary or compensation from the department.

(2) "Feedlot" means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

(3) "Livestock" means a bovine animal, *domestic bison,* horse, mule, or ass, regardless of its age or sex.

(4) "Person" means an individual, partnership, corporation, association, firm, or entity not enumerated that is capable of owning or controlling livestock.

(5) "Specially qualified deputy stock inspector" means a deputy state stock inspector who has been certified by the department, under rules adopted pursuant to 81-3-202, as qualified to conduct an inspection for a permanent transportation permit for a saddle, work, or show horse.

(6) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector."

Section 6. Section 81-4-603, MCA, is amended to read:

"81-4-603. Taking up and disposition of estrays — advertisement. (1) A stock inspector authorized by the department shall take into possession an estray found in the stock inspector's district and*, except as provided in 81-2-120,* shall either:

(a) ship or arrange for the shipment of the estray to a licensed livestock market for sale; or

(b) hold the estray and care for the estray in the cheapest and most practicable manner for at least 10 days and not more than 30 days after public

notice is published as provided in subsection (2). During the holding period, the stock inspector shall advertise that the estray is being held and that unless the estray is claimed by the owner, the stock inspector will on a date specified in the notice sell the estray at a public auction to the highest bidder for cash.

(2) The notice must be published in the newspaper doing the county printing of the county in which the estray is found and on the department's website and in each livestock market brand office and county sheriff's office in the state. This notice must be published in the newspaper at least one time and must contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

(3) ~~The~~ *Except as provided in 81-2-120, the* proceeds from the sale must be disposed of under 81-4-605 and 81-4-606.

(4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, upon payment to the department of the cost of caring for the estray as determined by the department."

Section 7. Section 81-5-101, MCA, is amended to read:

"81-5-101. Moving livestock from customary range forbidden. (1) A person who willfully moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, *domestic* bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) A person who negligently moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, *domestic* bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by:

(a) a term of imprisonment in the county jail not to exceed 6 months;

(b) a fine not exceeding:

(i) $25 for a first offense;

(ii) $250 for a second offense; and

(iii) $500 for a third or subsequent offense; or

(c) both imprisonment and the appropriate fine.

(3) Prior to the imposition of the penalty provided for in subsection (1) or (2), the owner of the livestock shall file a complaint with the department. The department shall conduct an investigation to determine the circumstances under which the livestock were moved."

Section 8. Section 81-5-104, MCA, is amended to read:

"81-5-104. Stolen livestock — seizure and forfeiture of vehicle and certain other property used in theft or transportation. (1) The use of a vehicle, money, equipment, or personalty for the theft or transportation of a stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, llama, alpaca, *domestic* bison, hogs, poultry, ostrich, rhea, emu, or the products of stolen livestock is unlawful. Any vehicle, money, equipment, or personalty used for the theft or unlawful transportation or upon probable cause believed to be devoted wholly or in part to the theft or unlawful transportation must be seized and held.

(2) Within 45 days after the seizure, a peace officer or officer of the agency that seizes the property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall serve the summons upon all owners or claimants of the property by one of the following methods:

(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no newspaper of general county circulation, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for unlawful transportation; or

(b) the vehicle owner is not in collusion with the party or parties guilty of the theft."

Section 9. Section 87-1-216, MCA, is amended to read:

"87-1-216. Wild buffalo or bison as species in need of management — policy — department duties. (1) The legislature finds that significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison. It is the purpose of this section:

(a) to designate publicly owned wild buffalo or bison originating from Yellowstone national park as a species requiring disease control;

(b) to designate other wild buffalo or bison as a species in need of management; and

(c) to set out specific duties for the department for management of the species.

(2) The department:

(a) is responsible for the management, including but not limited to public hunting, of wild buffalo or bison in this state that have not been exposed to or infected with a dangerous or contagious disease but may threaten persons or property;

(b) shall consult and coordinate with the department of livestock on implementation of the provisions of subsection (2)(a) to the extent necessary to ensure that wild buffalo or bison remain disease-free; and

(c) shall cooperate with the department of livestock in managing publicly owned wild buffalo or bison that enter the state on public or private land from a herd that is infected with a dangerous disease, as provided in 81-2-120, under a plan approved by the governor. The department of livestock is authorized under the provisions of 81-2-120 to regulate publicly owned wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease. The department may, after agreement and authorization by the department of livestock, authorize the public hunting of wild buffalo or bison that have been exposed to or infected with a contagious

disease, pursuant to 87-2-730. *The department may, following consultation with the department of livestock, adopt rules to authorize the taking of bison where and when necessary to prevent the transmission of a contagious disease.*

(3) The department may adopt rules with regard to wild buffalo or bison that have not been exposed to or infected with a contagious disease but are in need of management because of potential damage to person or property.

(4) When adopting and implementing rules regarding the special wild buffalo or bison license issued pursuant to 87-2-730, the department shall consult and cooperate with the department of livestock regarding when and where public hunting may be allowed and the safe handling of wild buffalo or bison parts in order to minimize the potential for spreading any contagious disease to persons or to livestock."

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 11. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 81, chapter 5, part 1, and the provisions of Title 81, chapter 5, part 1, apply to [section 1].

Section 12. Name change — directions to code commissioner. The code commissioner is directed to change the phrase "wild buffalo or bison" to "wild buffalo or wild bison" wherever the phrase appears in legislation enacted by the 2011 legislature if the legislation amends Title 81 or creates new sections that are codified in Title 81.

Section 13. Effective date. [This act] is effective on passage and approval.

Approved May 13, 2011

CHAPTER NO. 404

[SB 229]

AN ACT AUTHORIZING CERTAIN SEPARATE LEGAL ENTITIES CREATED UNDER THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT TO CONTRACT WITH THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO PROVIDE RETIREMENT SYSTEM COVERAGE FOR EMPLOYEES OF A LEGAL ENTITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Authorization to become contracting employer in public employees' retirement system. A separate legal entity created and authorized under this part that manages or operates an irrigation project may contract with the public employees' retirement board as provided in Title 19, chapter 3, part 2, to become a contracting employer in the public employees' retirement system.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 18, chapter 11, part 1, and the provisions of Title 18, chapter 11, part 1, apply to [section 1].

Approved May 13, 2011

CHAPTER NO. 405

[SB 265]

AN ACT PROVIDING FOR A TAX ABATEMENT FOR CERTAIN RESIDENTIAL GRAY WATER SYSTEMS AND COMMON GRAY WATER AND POTABLE WATER SYSTEMS; ESTABLISHING REQUIREMENTS FOR THE RESIDENCES AND FOR A MINIMUM NUMBER OF OCCUPANTS TO QUALIFY; PROVIDING FOR THE ABATEMENT DURING CONSTRUCTION AND FOR 10 YEARS FOLLOWING COMPLETION OF CONSTRUCTION; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE USE OF THE ABATEMENT; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Common gray water and potable water system" means a gray water system and a potable water system that are common elements of a multiple dwelling project.

(2) (a) "Gray water system" means a system to treat and distribute untreated household wastewater that meets the requirements of 75-5-305(2), 75-5-325 through 75-5-327, and all administrative rules and local government regulations conforming with those provisions.

(b) Household wastewater does not include water that is or has come into contact with toilet water; wastewater from kitchen sinks, water softeners, and dishwashers; or laundry water used for washing infectious garments, including diapers.

(3) "Multiple dwelling project" means:

(a) a residential condominium on common land consisting of residential units in single or multiunit structures for at least 25 occupants; or

(b) a class four residential building as described in 15-6-134, or that portion of a class four building that is used for residential purposes, that has multiple residential units for at least 25 occupants and includes as much of the surrounding land, not exceeding 5 acres, as is reasonably necessary for its residential use.

(4) "Potable water system" means a privately owned public water supply system as defined in 75-6-102 that is used in common by all the dwellings of a multiple dwelling project.

(5) "Residential dwelling" means any class four residential dwelling described in 15-6-134 that is a single-family dwelling unit, including a trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 5 acres, as is reasonably necessary for its use as a dwelling.

Section 2. Gray water system for newly constructed residence — tax abatement. (1) A residential dwelling that is under construction or that is newly constructed with a residential gray water system is taxed at 91% of its taxable market value during the course of the construction and for 10 years after completion of construction as provided in this section.

(2) To receive a tax abatement under this section, a taxpayer shall apply, on a form provided by the department, to the department on or before April 15 of the year for which the first abatement is claimed for property under construction and for the first year of the completion of construction but not later

than 1 year after the completion of the construction. The claimant shall provide a certification from the local board of health pursuant to 50-2-116 that the residential dwelling is under construction or was constructed with a gray water system that meets the requirements of this section. The department may require other information that it considers necessary to determine the eligibility of the residential dwelling for a property tax abatement.

(3) An abatement granted under this section remains in effect through the 10th year following the year construction was completed.

Section 3. Common gray water and potable water systems for newly constructed multiple dwelling projects — tax abatement. (1) A multiple dwelling project that is under construction or that is constructed with a common gray water and potable water system is taxed at 91% of the taxable market value of the project or taxable market value of each residential condominium unit during the course of the construction and for 10 years after completion of construction as provided in this section.

(2) To receive a tax abatement, a taxpayer shall apply, on a form provided by the department, to the department on or before April 15 of the year for which the first abatement is claimed for property under construction and for the first year of the completion of construction but not later than 1 year after the completion of the construction of the residential units or, if construction is to occur over a multiyear period, after the completion of the first residential unit. The claimant shall provide a certification from the local board of health pursuant to 50-2-116 that the residential dwelling is under construction or was constructed with a common gray water and potable water system that meets the requirements of this section. The department may require other information that it considers necessary to determine the eligibility of the residential dwelling for a property tax abatement.

(3) An abatement granted under this section remains in effect through the 10th year following the year construction was completed.

(4) Only property with a common gray water and potable water system is eligible for the property tax abatement provided in this section.

Section 4. Change in property — fraudulent application. (1) A taxpayer qualifying for a property tax abatement under [section 2 or 3] shall report to the department any change to the subject property or to the gray water system under [section 2] or common gray water and potable water system under [section 3] that may affect the property's qualification for the tax abatement.

(2) A taxpayer who applies for a tax abatement under [section 2 or 3] and submits a false or fraudulent application for a property tax abatement is guilty of false swearing under 45-7-202.

Section 5. Report to interim committee. By September 15, 2014, the department shall provide a report to the revenue and transportation interim committee on the use of property tax abatement under [sections 2 and 3]. The committee shall, based on information contained in the report, make recommendations to the next legislature on the continuation or structure of the abatement.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 through 5].

Section 7. Effective date. [This act] is effective July 1, 2011.

Section 8. Applicability. [This act] applies to residential dwellings and multiple dwelling projects constructed after June 30, 2011.

Approved May 13, 2011

CHAPTER NO. 406

[SB 266]

AN ACT REVISING THE LOCAL ABATEMENT OF THE COAL GROSS PROCEEDS TAX ON COAL PRODUCED BY A NEW OR EXPANDING UNDERGROUND COAL MINE; PROVIDING THAT THE TAX ABATEMENT MAY BE 50% OR LESS FOR AN UNDERGROUND MINE TAXED AT 5% OF THE VALUE OF COAL; PROVIDING AN INITIAL COAL GROSS PROCEEDS TAX OF 2.5% ON COAL PRODUCED FROM A NEW OR EXISTING UNDERGROUND MINE FOR AN INITIAL 10-YEAR PERIOD; AMENDING SECTIONS 15-23-703 AND 15-23-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds — taxable value for county classification and nontax purposes. (1) (a) The department shall compute from the reported value of coal gross proceeds a tax roll that must be transmitted to the county treasurer on or before September 15 of each year. The department may not levy or assess any mills against coal gross proceeds but shall, subject to subsection (1)(b) *and except as provided in subsection (1)(c)*, levy a tax of 5% against the value of coal as provided in 15-23-701(4). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(b) If the county grants a tax abatement for production from a new or expanding underground mine as provided in 15-23-715, the department shall levy a tax at a rate that would, after providing for payment to the state of the amount attributable to all applicable state mill levies as if the tax rate were 5%, reduce the tax received by county taxing jurisdictions and any school district on the new or expanded production by ~~50%~~ *the percentage amount of the tax abated by the county under 15-23-715*.

(c) (i) For tax years beginning after December 31, 2011, the initial tax on coal mined from a new underground coal mine is 2.5% against the value of coal as provided in 15-23-701(4) for the first 10 years of coal production. After 10 years, coal production from the mine is taxed as provided in subsection (1)(a).

(ii) For tax years beginning on or after January 1, 2011, and ending December 31, 2020, the initial tax rate under subsection (1)(c)(i) applies to coal mined from an existing underground coal mine producing coal from the mine as of December 31, 2010. For tax years beginning after December 31, 2020, coal production is taxed as provided in subsection (1)(a).

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) (a) Except as provided in subsections (4) and (7) and subject to subsection (3)(b), coal gross proceeds taxes must be allocated to the state, county, and school districts in the same relative proportions as the taxes were distributed in fiscal year 1990.

(b) The county treasurer shall multiply the coal gross proceeds taxes collected in the county under this part by the relative proportions determined for the state, county, and school districts under subsection (3)(a). Those amounts must be distributed as follows:

(i) the state share must be distributed in the relative proportions required by levies for state purposes in the same manner as property taxes were distributed in fiscal year 1990;

(ii) except as provided in subsection (5), the county share must be distributed in the relative proportions required by levies for county purposes, other than an elementary school or high school, in the same manner as property taxes were distributed in the previous fiscal year;

(iii) except as provided in subsection (6), the school districts' share must be distributed in the relative proportions required by levies for school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(4) If there is a distribution of coal gross proceeds from a new or expanding underground mine with a tax abatement as provided under 15-23-715, the county treasurer shall distribute:

(a) the state's share of the coal gross proceeds determined under subsection (1)(b) in the relative proportion required by the appropriate levies for state purposes; and

(b) the county's share and any school district's share of the coal gross proceeds determined under subsection (1)(b) as provided in this section.

(5) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (3)(b)(i), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in the previous fiscal year.

(b) If the allocation in subsection (5)(a) exceeds the total budget of a taxing unit, the commissioners may direct the county treasurer to reallocate the excess to any taxing unit within the county.

(6) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in the previous fiscal year.

(b) If the allocation under subsection (6)(a) exceeds the total budget for a fund, the trustees may reallocate the excess to any budgeted fund of the school district.

(7) Except as provided in subsections (8) and (9), the county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(8) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds under subsection (7) in the same manner as provided in subsection (5).

(9) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under subsection (7) in the same manner as provided in subsection (6)."

Section 2. Section 15-23-715, MCA, is amended to read:

"15-23-715. New or expanding underground mines — tax abatement. (1) A county may abate taxation under this chapter for production from a new or expanding underground coal mine *that is taxed at the rate provided in 15-23-703(1)(a)* by 50% *or less* for 5 or 10 years by directing the department to levy the tax at a lower tax rate as provided in 15-23-703(1)(b).

(2) An abatement must be authorized by the governing body of a county. Before an abatement authorization is effective, the school boards of all affected school districts must be notified of the abatement. The authorization must be made by a resolution of the county governing body after a public hearing. The county governing body shall publish notice of the hearing in a newspaper that meets the requirements of 7-1-2121. The notice must be published twice, with at least 6 days separating publications. The first publication may be no more than 30 days prior to the hearing and the last publication must be at least 3 days prior to the hearing.

(3) An abatement authorization may be made for a 5-tax-year period, and upon expiration of that period, it may be authorized for one more 5-tax-year period. *The abatement of taxation for the second 5-tax-year period may be 50% or less.* An abatement authorization must be made prior to the beginning of the property tax year in which abatement is in effect. The department must be notified of each abatement authorization prior to the beginning of the tax year.

(4) (a) Production from a new underground mine is all production from a mine that in the year prior to the tax year in which the first abatement will apply had production of less than 500,000 tons of coal and the production during the course of the abatement period is estimated to be and actually amounts to at least five times the preabatement production amount.

(b) Production from an expanding underground mine is that portion of the mine's production that exceeds the average production for the previous 3 years. To qualify for the abatement, the total of the prior average production and the new production may not decrease during the time of the abatement."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010.

Approved May 13, 2011

CHAPTER NO. 407

[SB 286]

AN ACT REVISING COAL PROSPECTING LAWS; MODIFYING CERTAIN COAL PROSPECTING PROCEDURES; AMENDING SECTION 82-4-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-226, MCA, is amended to read:

"82-4-226. Prospecting permit. (1) Except as provided in subsection ~~(8)~~ *(7)*, prospecting by any person on land not included in a valid strip-mining or

underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) ~~An~~ *Except for an application filed pursuant to subsection (8), an* application for a prospecting permit must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.

(3) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(6) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(7) *(a)* Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through (6). In addition, *coal* prospecting that is conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to subsections (1) through (6). However, *except for a prospecting operation for which a permit is required by subsection (7)(b),* a person who conducts prospecting described in this subsection shall file with the department a notice of intent to prospect that

contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time.

(b) Prospecting conducted to determine the location, quality, or quantity of coal outside an area designated unsuitable that is not included in a valid strip-mining or underground-mining permit and that does not remove more than 250 tons of coal may not be conducted without a valid prospecting permit issued pursuant to subsection (8).

(8) (a) An application for a coal prospecting permit required by subsection (7)(b) must contain:

(i) the name, address, and telephone number of the person who seeks to prospect;

(ii) the name, address, and telephone number of the person's representative who will be present at and responsible for conducting the prospecting activities;

(iii) a narrative describing the proposed prospecting area or a map of the prospecting area at a scale of 1:24,000 or greater showing:

(A) the general location of drill holes and trenches;

(B) existing and proposed roads;

(C) occupied dwellings;

(D) topographic features;

(E) bodies of water; and

(F) pipelines;

(iv) a copy of the documents upon which the applicant bases its legal right to prospect, including documentation that the owners of the land affected have been notified and understand that the department will make investigations and inspections to ensure compliance;

(v) a statement of the period of intended prospecting; and

(vi) a description of the method of prospecting to be used and the practices that will be followed to protect the environment and reclaim disturbed areas, including plugging of prospecting holes in accordance with rules adopted by the board.

(b) Within 10 working days of receipt of an application, the department shall notify the applicant in writing as to whether the application is complete and preliminarily acceptable. If the department determines that the application is not complete or not preliminarily acceptable, the department shall include a detailed identification of information necessary to cure the deficiency.

(c) Within 5 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the response and notify the person as to whether the application is complete and preliminarily acceptable. If the department determines the application is not complete or preliminarily acceptable, the department shall notify the person in writing and include a detailed identification of information necessary to make the application complete and preliminarily acceptable.

(d) When the department determines that the application is complete and preliminarily acceptable, the department shall notify the applicant in writing. The notification must include the amount of bond that is required to be posted in order for the permit to be issued.

(e) Upon receipt of the department's determination of preliminary acceptability, the applicant shall place an advertisement in a newspaper of general circulation in the locality of the proposed prospecting. The notice must describe the application and a place in the locality where the public may examine the application and must notify the public that it may submit written comments by delivering or mailing them to the department within 10 days following publication of the notice.

(f) After close of the public comment period, the department shall notify the applicant as to whether the application is acceptable. The department shall issue the notification within 5 working days of the close of the comment period if no comments are received and within 10 working days if comments are received. In the notice of acceptability, the department shall notify the applicant of any adjustment in the amount of the bond.

(g) A permit issued pursuant to this subsection (8) is subject to subsections (3) through (6)."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to applications for prospecting permits pursuant to 82-4-226 submitted to the department of environmental quality on or after [the effective date of this act].

Approved May 13, 2011

CHAPTER NO. 408

[SB 297]

AN ACT DEFINING "COAL BENEFICIATION PLANT"; EXCLUDING COAL BENEFICIATION PLANTS FROM PERMITTING AND REGULATION UNDER THE MONTANA STRIP AND UNDERGROUND MINING RECLAMATION ACT; CLARIFYING THAT A COAL PREPARATION FACILITY REGULATED UNDER THAT ACT DOES NOT INCLUDE A FACILITY WHERE COAL IS PREPARED AND THEN CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON; CLARIFYING THAT A MINING OPERATION DOES NOT INCLUDE A FACILITY OR SURFACE PREMISES WHERE COAL IS CONVERTED INTO ANOTHER ENERGY FORM OR TO A GASEOUS OR LIQUID HYDROCARBON OR A COAL BENEFICIATION PLANT; AMENDING SECTION 82-4-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which a mineral is not being produced and that the department determines will not continue or resume operation.

(2) "Adjacent area" means the area outside the permit area where a resource or resources, determined in the context in which the term is used, are or could reasonably be expected to be adversely affected by proposed mining operations, including probable impacts from underground workings.

(3) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion and deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(4) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and coal refuse piles eliminated, so that:

(a) the reclaimed terrain closely resembles the general surface configuration if it is comparable to the premine terrain. For example, if the area was basically level or gently rolling before mining, it should retain these features after mining, recognizing that rolls and dips need not be restored to their original locations and that level areas may be increased.

(b) the reclaimed area blends with and complements the drainage pattern of the surrounding area so that water intercepted within or from the surrounding terrain flows through and from the reclaimed area in an unobstructed and controlled manner;

(c) postmining drainage basins may differ in size, location, configuration, orientation, and density of ephemeral drainageways compared to the premining topography if they are hydrologically stable, soil erosion is controlled to the extent appropriate for the postmining land use, and the hydrologic balance is protected; and

(d) the reclaimed surface configuration is appropriate for the postmining land use.

(5) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

(6) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of the mining operations.

(7) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(8) "Board" means the board of environmental review provided for in 2-15-3502.

(9) "Coal beneficiation plant" means a commercial facility where coal is subject to coal preparation that is not operated, owned, or controlled by the mine operator of the mine providing the coal.

~~(9)~~*(10)* "Coal conservation plan" means the planned course of conduct of a ~~strip-~~ *strip-mining* or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

~~(10)~~*(11)* (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

~~(11)~~*(12) (a)* "Coal preparation plant" means a commercial facility where coal is subject to coal preparation *in connection with a strip-mine or underground-coal-mine*. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(b) The term does not mean:

(i) a facility where coal is prepared and converted into another energy form or to a gaseous or liquid hydrocarbon; or

(ii) a coal beneficiation plant.

~~(12)~~*(13)* "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance are made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

~~(13)~~*(14)* "Cropland" means land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

~~(14)~~*(15)* "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

~~(15)~~*(16)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(16)~~*(17)* "Developed water resources" means land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

~~(17)~~*(18)* "Ephemeral drainageway" means a drainageway that flows only in response to precipitation in the immediate watershed or in response to the melting of snow or ice and is always above the local water table.

~~(18)~~*(19)* "Failure to conserve coal" means the nonremoval or nonuse of minable and marketable coal by an operation. However, the nonremoval or nonuse of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

~~(19)~~*(20)* "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

~~(20)~~*(21)* "Fish and wildlife habitat" means land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

~~(21)~~*(22)* "Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

~~(22)~~*(23)* "Grazing land" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for livestock grazing or browsing or occasional hay production.

~~(23)~~*(24)* "Higher or better uses" means postmining land uses that have a higher economic value or noneconomic benefit to the landowner or the community than the premining land uses.

~~(24)~~*(25)* "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake, or reservoir, and encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground water and surface water storage.

~~(25)~~*(26)* "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a ~~strip-~~ *strip-mining* or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

~~(26)~~*(27)* "Industrial or commercial" means land used for:

(a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

~~(27)~~*(28)* "Intermittent stream" means a stream or reach of a stream that is below the water table for at least some part of the year and that obtains its flow from both ground water discharge and surface runoff.

~~(28)~~*(29)* "Land use" means specific uses or management-related activities, rather than the vegetative cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the land use. Land use categories include cropland, developed water resources, fish and wildlife habitat, forestry, grazing land, industrial or commercial, pastureland, land occasionally cut for hay, recreation, or residential.

~~(29)~~*(30)* "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

~~(30)~~*(31)* "Material damage" means, with respect to protection of the hydrologic balance, degradation or reduction by coal mining and reclamation operations of the quality or quantity of water outside of the permit area in a manner or to an extent that land uses or beneficial uses of water are adversely affected, water quality standards are violated, or water rights are impacted. Violation of a water quality standard, whether or not an existing water use is affected, is material damage.

~~(31)~~*(32)* "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled,

water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(32)~~*(33)* "Minable coal" means that coal that can be removed through ~~strip~~ *strip-mining* or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(33)~~*(34)* "Mineral" means coal and uranium.

~~(34)~~*(35) (a)* "Operation" means:

~~(a)~~*(i)* all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, *except as provided in subsection (35)(b)(ii),* including coal preparation plants; and

~~(b)~~*(ii)* all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(b) The term does not mean:

(i) the surface premises, facilities, railroad loops, roads, and equipment used in the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon;

(ii) a commercial facility or surface premises where coal that is converted into another energy form or a gaseous or liquid hydrocarbon is prepared; or

(iii) a coal beneficiation plant.

~~(35)~~*(36) (a)* "Operator" means a person engaged in:

~~(a)~~*(i)* strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

~~(b)~~*(ii)* coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location;

~~(c)~~*(iii)* operating a coal preparation plant; or

~~(d)~~*(iv)* uranium mining using in situ methods.

(b) The term does not mean a person operating a coal beneficiation plant.

~~(36)~~*(37)* "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

~~(37)~~*(38)* "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

~~(38)~~*(39)* "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

~~(39)~~*(40)* "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(40)~~*(41)* "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

~~(41)~~*(42)* "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning ~~strip-~~ *strip-mining* or underground-coal-mining and reclamation operations under this part.

~~(42)~~*(43)* "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work conducted on lands affected by strip mining or underground mining under a plan approved by the department to make those lands capable of supporting the uses that those lands were capable of supporting prior to any mining or to higher or better uses.

~~(43)~~*(44)* "Recreation" means land used for public or private leisure-time activities, including developed recreation facilities, such as parks, camps, and amusement areas, as well as areas for less intensive uses, such as hiking, canoeing, and other undeveloped recreational uses.

~~(44)~~*(45)* "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the department. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

~~(45)~~*(46)* "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(46)~~*(47)* "Residential" means land used for ~~single-~~ *single-family* and multiple-family housing, mobile home parks, or other residential lodgings.

~~(47)~~*(48)* "Restore" or "restoration" means reestablishment after mining and reclamation of the land use that existed prior to mining or to higher or better uses.

~~(48)~~*(49)* (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes*:*

(i) remining*;* and

(ii) coal preparation *operated in connection with a strip mine*.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(49)~~*(50)* "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(50)~~*(51)* "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income from farming or ranching operations;

(c) the state of Montana when the state owns the surface; or

(d) the appropriate federal land management agency when the United States government owns the surface.

~~(51)~~*(52)* "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(52)~~*(53) (a)* "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata.

(b) The term includes*:*

(i) mining by in situ methods*; and*

(ii) coal preparation operated in connection with an underground mine.

~~(53)~~*(54)* "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

~~(54)~~*(55)* "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(55)~~*(56)* "Wildlife habitat enhancement feature" means a component of the reclaimed landscape, established in conjunction with land uses other than fish and wildlife habitat, for the benefit of wildlife species, including but not limited to tree and shrub plantings, food plots, wetland areas, water sources, rock outcrops, microtopography, or raptor perches.

~~(56)~~*(57)* "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 2. Effective date — contingency. (1) [This act] is effective on the date that the office of surface mining reclamation and enforcement publishes notice in the federal register that [this act] is approved pursuant to 30 CFR 732.17.

(2) The department of environmental quality shall provide a copy of the notice described in subsection (1) to the code commissioner.

Approved May 13, 2011

CHAPTER NO. 409

[SB 298]

AN ACT PROVIDING THAT A GOVERNING BODY MAY NOT DENY A PROPOSED SUBDIVISION BASED SOLELY ON A CERTAIN WILDLAND-URBAN INTERFACE DESIGNATION; AND AMENDING SECTION 76-3-608, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services *or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145*.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder."

Approved May 13, 2011

CHAPTER NO. 410

[SB 312]

AN ACT REVISING METAL MINE RECLAMATION LAWS; REQUIRING THAT DRAFT PERMITS BE ISSUED FOR COMPLETE AND COMPLIANT APPLICATIONS; REVISING COORDINATION OF PERMIT REVIEWS WITH THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-335, 82-4-337, 82-4-342, AND 82-4-353, MCA.

WHEREAS, the metal mine reclamation laws provide substantive requirements for the permitting of metal mines in Montana; and

WHEREAS, the Montana Environmental Policy Act provides procedures for environmental assessment with respect to decisions of state agencies; and

WHEREAS, coordination of review of permit applications for compliance with substantive requirements of mine permitting statutes and environmental assessment of permit decisions would create efficiency, reduce burdens on state government, and require permit applicants to more fully bear the burden of providing complete permit applications that meet all requirements of the metal mine reclamation laws and other laws of the state related to mine permitting in a timely fashion; and

WHEREAS, completion of the requirements of the Montana Environmental Policy Act within the timeframes required can be facilitated by an initial determination of compliance with applicable permitting laws and regulations.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. ~~A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.~~ *A major amendment is an amendment that may significantly affect the human environment. A minor*

amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Completeness" means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.

~~(4)~~*(5)* "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(5)~~*(6)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(6)~~*(7)* "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

~~(7)~~*(8)* "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

~~(8)~~*(9)* "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

~~(9)~~*(10)* "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons.

~~(10)~~*(11)* "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

~~(11)~~*(12)* "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

~~(12)~~*(13)* "Placer deposit" means:

(a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

~~(13)~~*(14)* "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

~~(14)~~*(15)* "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will

be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation, which may include use of the land as an industrial site not necessarily related to mining;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

~~(15)~~*(16)* "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.

~~(16)~~*(17)* (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection (16)(c) of this section, and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

~~(17)~~*(18)* "Soil materials" means earth material found in the upper soil layers that will support plant growth.

~~(18)~~*(19)* (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(19)~~*(20)* "Underground mining" means all methods of mining other than surface mining.

~~(20)~~*(21)* "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(21)~~*(22)* "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption — small miners — written agreement. (1) Except as provided in subsections (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is an individual, that:

(i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed $10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of

its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in ~~82-4-303(16)(a)(i)~~ *82-4-303(17)(a)(i)* and ~~(16)(a)(ii)~~ *(17)(a)(ii).*

(8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).

(b) The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an impoundment to store waste from ore processing is included in the 5-acre limit specified in ~~82-4-303(16)(a)(i)~~ *82-4-303(17)(a)(i)* and ~~(16)(a)(ii)~~ *(17)(a)(ii)* and is subject to the provisions of this subsection (8).

(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the

reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.

(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).

(9) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment."

Section 3. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of

those activities in the state without first obtaining ~~an~~ *a final* operating permit from the department. Except as provided in subsection (2), a separate*, final,* operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of $500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 4. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification, amendment~~, or revision~~, *or revision*. (1) (a) The department shall review all applications for operating permits for completeness *and compliance with the requirements of this part and rules adopted pursuant to this part* within ~~60~~ *90* days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial ~~completeness~~ notice must note all deficiency issues, and the department may not in a later

~~completeness~~ notice raise an issue pertaining to the initial application that was not raised in the initial notice. ~~The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b).~~ The department shall notify the applicant concerning completeness *and compliance* as soon as possible. An application is considered complete *and compliant* unless the applicant is notified of ~~any~~ deficiencies within the appropriate review period.

~~(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application.~~

(b) The review for completeness and compliance is limited to areas in regard to which the department has statutory authority.

(c) When providing notice of deficiencies, the department shall identify each section in this part or rules adopted pursuant to this part related to the deficiency.

(d) When an application is complete and compliant, the department shall:

(i) declare in writing that the application is complete and compliant;

(ii) detail in writing the substantive requirements of this part and how the application complies with those requirements; and

(iii) issue a draft permit. The department may, as a condition of issuing the draft permit, require that the applicant obtain other permits required by law but not provided for in this part. However, the department may not withhold issuance of the draft permit in the absence of those permits.

(e) Prior to issuance of a draft permit, the department shall inspect the site. If the site is not accessible because of extended adverse weather conditions, the department shall inspect the site at the first available opportunity and may extend the time period prescribed in subsection (1)(a) by a term agreed to by the applicant.

(f) Issuance of the draft permit as a final permit is the proposed state action subject to review required by Title 75, chapter 1.

(g) If the applicant is not notified ~~of~~ *that there are* deficiencies or inadequacies in the ~~proposed reclamation plan and plan of operation~~ *application or that the application is compliant* within the time period *required by subsection (1)(a)*, the *final* operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection ~~(1)(c)~~ *(1)(h)* of this section. The department shall promptly notify the applicant of the form and amount of bond that will be required. *After the department notifies the applicant of deficiencies in the application within the time period required by subsection (1)(a), no further action by the department is required until the applicant has responded to the deficiency notification.*

~~(c)~~*(h)* ~~A~~ *Except as provided in (1)(g), a final* permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(10); ~~and~~

(iii) the department has found that permit issuance is not prohibited by 82-4-335(9) or 82-4-341(7)*;*

(iv) the review pursuant to Title 75, chapter 1, is completed or 1 year has elapsed after the date the draft permit was issued, whichever is less. The applicant may by written waiver extend this time period.

(v) the department has made a determination that the application and the final permit meet the substantive requirements of this part and the rules adopted pursuant to this part.

~~(d) (i) Prior to issuance of a permit, the department shall inspect the site, unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.~~

~~(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.~~

~~(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.~~

~~(iv)~~*(i)* If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

~~(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.~~

(2) (a) After issuance of a draft permit but prior to receiving a final permit, an applicant may propose modifications to the application. If the proposed modifications substantially change the proposed plan of operation or reclamation, the department may terminate the draft permit and review the application as modified pursuant to subsection (1) for completeness and compliance and issuance of a new draft permit.

(b) The department shall consult with the applicant before placing stipulations in a draft or final permit. Permit stipulations in a draft or final permit may, unless the applicant consents, address only compliance issues within the substantive requirements of this part or rules adopted pursuant to this part. For a stipulation imposed without the applicant's consent, the department shall provide to the applicant in writing the reason for the stipulation, a citation to the statute or rule that gives the department the authority to impose the stipulation, and, for a stipulation imposed in the final

permit that was not contained in the draft permit, the reason that the stipulation was not contained in the draft permit.

(c) Within 40 days of the completion of the review required by Title 75, chapter 1, or 1 year from the date the draft permit is issued, whichever is less, the department shall issue its bond determination.

(d) When the department prepares an environmental review jointly with a federal agency acting under the National Environmental Policy Act, the applicant may by written waiver extend the 1-year deadline contained in subsection (1)(g)(iv).

(e) Upon submission of the bond and subject to subsection (1)(h), the department shall issue the final permit.

~~(2)~~*(3)* The *final* operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned, unless the permit is suspended or revoked by the department as provided in this part.

~~(3)~~*(4)* The *final* operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations *not permitted under the terms of regulatory permits held by the permittee* are revealed by field inspection *and the department has the authority to address them under the provisions of this part*.

~~(4) (a)~~*(5) (a)* The modification of ~~an~~ *a final* operating permit ~~may be a major or minor permit~~ *may be a major or minor permit* amendment or a ~~permit~~ revision. ~~A modification of the operating permit, including a~~ *permit revision. A modification of the operating permit, including a* modification necessary to ~~conform to~~ *comply with* the requirements of existing law as interpreted by a court of competent jurisdiction~~,~~ must be processed in accordance with the procedures for an application for a permit amendment ~~or revision~~ *or revision* that are established pursuant to 82-4-342 and this section~~, including any environmental analysis required by Title 75, chapter 1, part 2~~.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (5)(a) are completed.

~~(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.~~

~~(5) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.~~

~~(6) Applications for major amendments must be processed in the same manner as applications for new permits.~~

~~(7) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of~~

~~amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.~~

~~(8) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.~~"

Section 5. Section 82-4-342, MCA, is amended to read:

"82-4-342. Amendment to operating permits. (1) During the term of an operating permit issued under this part, an operator may apply for *a permit revision as described in subsections (5)(g) through (5)(j) or* an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) ~~(a)~~*(a)* The board may by rule establish criteria for the ~~classification of amendments as major or minor. The board shall adopt rules establishing requirements for the~~ *classification of amendments as major or minor. The board shall adopt rules establishing requirements for the* content of applications for ~~major and minor~~ *revisions and major and minor* amendments and the procedures for processing ~~minor~~ *revisions and minor* amendments.

~~(b) An amendment must be considered minor if:~~

~~(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;~~

~~(ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and~~

~~(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.~~

(b) An amendment must be considered minor if:

(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

(ii) evidence is submitted showing that a local government has requested retention of the mine-

related facilities for a postmining use; and

(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

(3) Applications for ~~major~~ *major* amendments must be processed pursuant to 82-4-337.

~~(4) The department shall review an application for a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised in accordance with the application.~~

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

~~(5)~~*(5)* The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action *and permit revisions*:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than ~~10~~ *25* acres or ~~5%~~ *10%* of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

~~(h)~~*(i)* changes in an approved operating plan ~~or reclamation plan~~ for an activity that was previously permitted, ~~provided that~~ ~~the impacts of~~ *if* the ~~change~~ *changes* will be insignificant relative to ~~the~~ ~~impacts of~~ the entire operation and ~~there is less than 10 acres of additional disturbance~~ *the changes are consistent with subsection (5)(g)*; and

~~(i)~~*(j)* changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use."

Section 6. Section 82-4-353, MCA, is amended to read:

"82-4-353. Administrative remedies — notice — appeals — parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.

(2) An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.

(3) All hearings and appeals under ~~82-4-337(3)~~ *82-4-337(4)*, 82-4-338(3)(b), 82-4-341(7) and (8), 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the person is capable of adequately representing the interests claimed.

(4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

Approved May 13, 2011

CHAPTER NO. 411

[SB 372]

AN ACT REDUCING THE TAXATION FOR A PORTION OF THE TAXABLE MARKET VALUE OF CLASS EIGHT BUSINESS EQUIPMENT OWNED BY A TAXPAYER; PROVIDING FUTURE TAX REDUCTIONS CONTINGENT ON INCREASES IN STATE COLLECTIONS OF INDIVIDUAL INCOME TAX AND CORPORATION LICENSE TAX; CHANGING OTHER PROVISIONS RELATING TO TAXATION OF CLASS EIGHT PROPERTY; PROVIDING A REIMBURSEMENT TO LOCAL GOVERNMENTS AND TAX INCREMENT FINANCING DISTRICTS UNDER THE ENTITLEMENT SHARE PAYMENT, TO SCHOOL DISTRICTS THROUGH THE BLOCK GRANT PROGRAM, TO COUNTY SCHOOL RETIREMENT AND COUNTY TRANSPORTATION REIMBURSEMENT, AND TO THE MONTANA UNIVERSITY SYSTEM THROUGH SUPPORT OF PUBLIC EDUCATION INSTITUTIONS FOR THE LOSS OF CLASS EIGHT AND CLASS TWELVE PROPERTY TAX REVENUE; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 15-1-121, 15-6-138, 15-6-141, 15-10-420, 15-23-101, 17-7-502, 20-9-501, 20-9-630, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment — *purpose* — appropriation. (1) *As described in 15-1-120(3), each local government is entitled to an annual amount that is the replacement for revenue received by local governments for diminishment of property tax base and various earmarked fees and other revenue that, pursuant to Chapter 574, Laws of 2001, amended by section 4, Chapter 13, Special Laws of August 2002, and later enactments, were consolidated to provide aggregation of certain reimbursements, fees, tax collections, and other revenue in the state treasury with each local government's share. The reimbursement under this section is provided by direct payment from the state treasury rather than the ad hoc system that offset certain state payments with local government collections due the state and reimbursements made by percentage splits, with a local government remitting a portion of collections to the state, retaining a portion, and in some cases sending a portion to other local governments.* ~~The amount calculated pursuant to this subsection, as adjusted pursuant to subsection (3)(a)(i), is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:~~

(2) The sources of dedicated revenue that were relinquished by local governments in exchange for an entitlement share of the state general fund were:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, boat, and aircraft taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-9-506; and

(iv) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes collected pursuant to the former provisions of Title 15, chapter 31, part 7;

(g) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(h) late filing fees pursuant to 61-3-220;

(i) title and registration fees pursuant to 61-3-203;

(j) veterans' cemetery license plate fees pursuant to 61-3-459;

(k) county personalized license plate fees pursuant to 61-3-406;

(l) special mobile equipment fees pursuant to 61-3-431;

(m) single movement permit fees pursuant to 61-4-310;

(n) state aeronautics fees pursuant to 67-3-101; and

(o) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

~~(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.~~

~~(b)~~*(3)* The *total* amount ~~estimated pursuant to subsections (1) and (2)(a)~~ *received by each local government in fiscal year 2010 as an entitlement share payment under this section is the base component for the fiscal year 2011 distribution, and in each subsequent year the prior year entitlement share payment, including any reimbursement payments received pursuant to subsection (7),* is each local government's base ~~year~~ component. The sum of all local governments' base ~~year~~ components is the ~~base~~ *fiscal* year entitlement share pool. ~~For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.~~

~~(3)~~*(4)* (a) The base ~~year~~ entitlement share pool must be increased annually by a growth rate as provided for in this subsection ~~(3)~~ *(4)*. The amount determined through the application of annual growth rates is the entitlement

share pool for each fiscal year. By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

~~(i) Before applying the growth rate for fiscal year 2007 to determine the fiscal year 2007 entitlement share payments, the department shall subtract from the fiscal year 2006 entitlement share payments the following amounts:~~

~~Beaverhead~~	~~$6,972~~
~~Big Horn~~	~~$52,551~~
~~Blaine~~	~~$13,625~~
~~Broadwater~~	~~$2,564~~
~~Carbon~~	~~$11,537~~
~~Carter~~	~~$407~~
~~Cascade~~	~~$100,000~~
~~Chouteau~~	~~$3,536~~
~~Custer~~	~~$7,011~~
~~Daniels~~	~~$143~~
~~Dawson~~	~~$3,893~~
~~Fallon~~	~~$1,803~~
~~Fergus~~	~~$9,324~~
~~Flathead~~	~~$100,000~~
~~Gallatin~~	~~$160,000~~
~~Garfield~~	~~$91~~
~~Glacier~~	~~$3,035~~
~~Golden Valley~~	~~$2,282~~
~~Granite~~	~~$4,554~~
~~Hill~~	~~$31,740~~
~~Jefferson~~	~~$5,700~~
~~Judith Basin~~	~~$1,487~~
~~Lake~~	~~$38,314~~
~~Lewis and Clark~~	~~$160,000~~
~~Liberty~~	~~$152~~
~~Lincoln~~	~~$3,759~~
~~Madison~~	~~$8,805~~
~~McCone~~	~~$1,651~~
~~Meagher~~	~~$2,722~~
~~Mineral~~	~~$2,361~~
~~Missoula~~	~~$200,000~~
~~Musselshell~~	~~$23,275~~
~~Park~~	~~$6,582~~
~~Petroleum~~	~~$36~~
~~Phillips~~	~~$653~~
~~Pondera~~	~~$10,270~~
~~Powder River~~	~~$848~~
~~Powell~~	~~$5,146~~
~~Prairie~~	~~$717~~

~~Ravalli $93,090~~
~~Richland $3,833~~
~~Roosevelt $9,526~~
~~Rosebud $19,971~~
~~Sanders $30,712~~
~~Sheridan $271~~
~~Stillwater $12,117~~
~~Sweet Grass $2,463~~
~~Teton $5,560~~
~~Toole $7,113~~
~~Treasure $54~~
~~Valley $6,899~~
~~Wheatland $918~~
~~Wibaux $72~~
~~Yellowstone $270,000~~
~~Anaconda-Deer Lodge $20,707~~
~~Butte-Silver Bow $53,057~~
~~Alberton $675~~
~~Bainville $258~~
~~Baker $2,828~~
~~Bearcreek $143~~
~~Belgrade $11,704~~
~~Belt $1,056~~
~~Big Sandy $1,130~~
~~Big Timber $2,910~~
~~Billings $163,499~~
~~Boulder $2,340~~
~~Bozeman $52,805~~
~~Bridger $1,303~~
~~Broadus $766~~
~~Broadview $258~~
~~Brockton $414~~
~~Browning $1,830~~
~~Cascade $1,374~~
~~Chester $1,430~~
~~Chinook $2,275~~
~~Choteau $3,050~~
~~Circle $1,018~~
~~Clyde Park $572~~
~~Colstrip $4,090~~
~~Columbia Falls $6,805~~
~~Columbus $3,245~~
~~Conrad $4,562~~
~~Culbertson $1,216~~

~~Cut Bank $5,316~~
~~Darby $1,348~~
~~Deer Lodge $5,708~~
~~Denton $503~~
~~Dillon $6,928~~
~~Dodson $194~~
~~Drummond $561~~
~~Dutton $661~~
~~East Helena $2,888~~
~~Ekalaka $689~~
~~Ennis $1,518~~
~~Eureka $1,733~~
~~Fairfield $1,120~~
~~Fairview $1,152~~
~~Flaxville $143~~
~~Forsyth $3,286~~
~~Fort Benton $2,579~~
~~Fort Peck $393~~
~~Froid $328~~
~~Fromberg $855~~
~~Geraldine $457~~
~~Glasgow $5,361~~
~~Glendive $8,099~~
~~Grass Range $254~~
~~Great Falls $96,422~~
~~Hamilton $7,148~~
~~Hardin $5,920~~
~~Harlem $1,422~~
~~Harlowton $1,678~~
~~Havre $16,223~~
~~Helena $45,877~~
~~Hingham $263~~
~~Hobson $397~~
~~Hot Springs $912~~
~~Hysham $482~~
~~Ismay $43~~
~~Joliet $1,006~~
~~Jordan $606~~
~~Judith Gap $263~~
~~Kalispell $28,144~~
~~Kevin $304~~
~~Laurel $10,804~~
~~Lavina $361~~
~~Lewistown $10,170~~

~~Libby $4,475~~
~~Lima $397~~
~~Livingston $12,145~~
~~Lodge Grass $889~~
~~Malta $3,389~~
~~Manhattan $2,485~~
~~Medicine Lake $410~~
~~Melstone $234~~
~~Miles City $14,152~~
~~Missoula $104,264~~
~~Moore $319~~
~~Nashua $536~~
~~Neihart $149~~
~~Opheim $180~~
~~Outlook $125~~
~~Philipsburg $1,612~~
~~Pinesdale $1,413~~
~~Plains $2,007~~
~~Plentywood $3,185~~
~~Plevna $225~~
~~Polson $7,722~~
~~Poplar $1,544~~
~~Red Lodge $3,903~~
~~Rexford $263~~
~~Richey $309~~
~~Ronan $3,262~~
~~Roundup $3,280~~
~~Ryegate $465~~
~~Saco $354~~
~~Scobey $1,798~~
~~Shelby $5,677~~
~~Sheridan $1,150~~
~~Sidney $7,747~~
~~Stanford $737~~
~~Stevensville $3,063~~
~~St. Ignatius $1,367~~
~~Sunburst $709~~
~~Superior $1,521~~
~~Terry $1,011~~
~~Thompson Falls $2,272~~
~~Three Forks $3,130~~
~~Townsend $3,286~~
~~Troy $1,654~~
~~Twin Bridges $695~~

~~Valier $817~~
~~Virginia City $223~~
~~Walkerville $1,183~~
~~West Yellowstone $2,083~~
~~Westby $263~~
~~White Sulphur Springs $1,734~~
~~Whitefish $9,932~~
~~Whitehall $1,889~~
~~Wibaux $893~~
~~Winifred $259~~
~~Winnett $314~~
~~Wolf Point $4,497~~

~~(ii)~~*(i)* The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for ~~the following periods:~~

~~(A)~~ the last 4 calendar years for which the information has been published~~; and~~

~~(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A)~~.

~~(iii)~~*(ii)* The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for ~~the following periods:~~

~~(A)~~ the last 4 calendar years for which the information has been published~~; and~~

~~(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A)~~.

(b) ~~(i)~~ The entitlement share pool growth rate for ~~the first~~ *each* year ~~of the biennium~~ must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(B)~~ *(4)(a)(i)* and ~~(3)(a)(iii)(B)~~ *(4)(a)(ii)*:

~~(A)~~*(i)* for counties, 54%;

~~(B)~~*(ii)* for consolidated local governments, 62%; and

~~(C)~~*(iii)* for incorporated cities and towns, 70%.

~~(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):~~

~~(A) for counties, 54%;~~

~~(B) for consolidated local governments, 62%; and~~

~~(C) for incorporated cities and towns, 70%.~~

~~(4)~~*(5)* As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection ~~(6)~~ *(8)*. ~~For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government.~~ The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably

reflects each special district's loss of revenue sources ~~listed in subsection (1)~~ *for which reimbursement is provided in this section*.

~~(5)~~*(6)* (a) The entitlement share pools calculated in this section*, the amounts determined under [section 3(2)] for local governments,* ~~and~~ the ~~block grants~~ *funding* provided for in subsection ~~(6)~~ *(8), and the amounts determined under [section 3(4)] for tax increment financing districts* are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. ~~Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool.~~ ~~The~~ *Except for the distribution made under [section 3(2)(b)], the* distributions must be made on a quarterly basis.

(b) (i) The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. ~~For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero.~~ The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the ~~base~~ *prior fiscal* year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the ~~base~~ *prior fiscal* year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the ~~base~~ *prior fiscal* year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool ~~not represented by~~ *before* the growth amount *or adjustments made under subsection (7) are applied* is *to be* distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

(7) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the department shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to the entitlement share distribution under this section. The total entitlement share distributions in a fiscal year, including distributions made pursuant to this subsection, equal the local fiscal year entitlement share pool. The ratio of each local government's distribution from the entitlement share pool must be recomputed to determine each local government's ratio to be used in the subsequent year's distribution determination under subsections (6)(b)(ii)(A), (6)(b)(iii)(A), and (6)(b)(iv)(A).

~~(6)~~*(8)* (a) ~~If~~ *Except for a tax increment financing district entitled to a reimbursement under [section 3(4)], if* a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any ~~block grant~~ *funding*. If a tax increment financing district referred to in subsection ~~(6)(b)~~ *(8)(b)* terminates, then the ~~block grant~~ *funding for the district* provided for in subsection ~~(6)(b)~~ *(8)(b)* terminates.

(b) ~~One-half~~ *Except for the reimbursement made under [section 3(4)(b)], one-half* of the payments provided for in this subsection ~~(6)(b)~~ *(8)(b)* must be made by November 30 and the other half by May 31 of each year. Subject to subsection ~~(6)(a)~~ *(8)(a)*, the entitlement share for tax increment financing districts is as follows:

~~Cascade~~	~~Great Falls - downtown~~	~~$468,966~~
Deer Lodge	TIF District 1	~~3,148~~ *$3,148*
Deer Lodge	TIF District 2	3,126
~~Flathead~~	~~Kalispell - District 1~~	~~758,359~~
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
~~Lewis and Clark~~	~~Helena - #2~~	~~731,614~~
Missoula	Missoula - ~~1-1B &~~ 1-1C	~~1,100,507~~ *250,279*
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
~~Yellowstone~~	~~Billings~~	~~436,815~~

~~(7)~~*(9)* The estimated ~~base~~ *fiscal* year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from *tax increment financing districts, from* countywide transportation block grants*, or from countywide retirement block grants*.

~~(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(o) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.~~

~~(b) For the purposes of subsection (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.~~

~~(9)~~*(10)* A three-fifths vote of each house *of the legislature* is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through ~~(3)~~ *(4)*.

~~(10)~~*(11)* When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

~~(11)~~*(12)* A local government may appeal the department's estimation of the base ~~year~~ component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

~~(12)~~*(13)* A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 2. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-207 or 15-6-220;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135;

(c) for oil and gas production, all:

(i) machinery;

(ii) fixtures;

(iii) equipment, including flow lines and gathering lines, pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, and gas boosters, together with equipment that is skidable, portable, or movable;

(iv) tools that are not exempt under 15-6-219; and

(v) supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-220, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class or that are rented under a purchase incentive rental program as defined in 15-6-202(4);

(f) special mobile equipment as defined in 61-1-101;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(h) x-ray and medical and dental equipment;

(i) citizens' band radios and mobile telephones;

(j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, the following definitions apply:

(a) "Coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds an axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(b) "Commercial establishment" includes any hotel, motel, office, petroleum marketing station, or service, wholesale, retail, or food-handling business.

(c) "Flow lines and gathering lines" means pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.

(3) Except as provided in 15-24-1402*,* ~~and~~ 15-24-2101, *and subsection (4) of this section* class eight property is taxed at*:*

(a) as determined pursuant to subsection (4):

(i) for the first $2 million of taxable market value, 2%; or

(ii) for the first $3 million of taxable market value, 1.5%; and

(b) for all taxable market value in excess of the applicable amount of taxable market value in subsection (3)(a), 3% ~~of its market value~~.

(4) (a) The adjusted taxable market value and rate in subsection (3)(a)(i) apply for class eight property unless in any year beginning with fiscal year 2013 the revenue collected from individual income tax and corporation income tax exceeds the revenue collected from individual income tax and corporation income tax in the previous fiscal year by more than 4%. In that case, for tax years beginning after the next December 31, the taxable market value and rate in subsection (3)(a)(ii) apply.

(b) For the purpose of making the determination required in subsection (4)(a), the department of administration shall certify to the secretary of state, by August 1 of each year in which class eight property is not taxed pursuant to subsection (3)(a)(ii), the amount of unaudited individual income tax and corporation income tax revenue in the prior fiscal year as recorded when that fiscal year statewide accounting, budgeting, and human resource system records are closed in July.

~~(4)~~*(5)* The class eight property of a person or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation.

~~(5)~~*(6)* The gas gathering facilities of a stand-alone gas gathering company providing gas gathering services to third parties on a contractual basis, owning more than 500 miles of gas gathering lines in Montana, and centrally assessed in tax years prior to 2009 must be treated as a natural gas transmission pipeline subject to central assessment under 15-23-101. For purposes of this subsection, the gas gathering line ownership of all affiliated companies, as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. 1504(a), must be aggregated for purposes of determining the 500-mile threshold."

Section 3. Reimbursement for class eight rate reduction and exemption — distribution — appropriations. (1) For the tax rate reductions in 15-6-138 and for the effective tax rate reductions on property under 15-6-145 because of the rate reductions required by the amendment of 15-6-138 in [section 2], the department shall, by June 1, 2012, and for each calendar year that the tax rate is adjusted under 15-6-138(4), estimate for each local government, as defined in 15-1-121(5), each school district, the county retirement fund under 20-9-501, the countywide school transportation reimbursement under 20-10-146, each tax increment financing district, and the 6-mill university levy for the purposes of 15-10-108, the difference between property tax collections under 15-6-138, as amended by [section 2], and under 15-6-145 and the property tax revenue that would have been collected under 15-6-138 and 15-6-145 if 15-6-138 had not been amended by [section 2]. The difference is the annual reimbursable amount for each local government, each school district, each tax increment financing district, and the 6-mill levy for the support of the Montana university system under 15-10-108.

(2) (a) The department shall distribute the reimbursement to local governments with the entitlement share payments under 15-1-121(7) for fiscal year 2012 and for all other fiscal years in which rate reductions occur . Local government reimbursements for subsequent years are made pursuant to the entitlement share recomputation as provided in 15-1-121(6).

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each local government. By August 1 following each of those fiscal years, the department shall distribute the amount determined under this subsection (2)(b) for local governments as provided in 15-1-121(6)(a).

(3) (a) The office of public instruction shall distribute the reimbursement to school districts with the block grants pursuant to 20-9-630 for fiscal year 2012 and all other fiscal years in which rate reductions occur. School district reimbursements for subsequent fiscal years are made pursuant to 20-9-630.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each school district. By November 30 following each of those fiscal years, the office of public instruction shall distribute the amount determined under this subsection (3)(b) in the same manner as the block grant is distributed by fund under 20-9-630.

(c) The amounts determined under this subsection (3) are statutorily appropriated, as provided in 17-7-502, from the general fund to the office of public instruction for distribution to school districts.

(4) (a) For each fiscal year beginning after fiscal year 2012 and all other fiscal years in which rate reductions occur, the amount determined under subsection (1) for each tax increment financing district must be added to the reimbursement amount for the tax increment financing district as provided in 15-1-121(8)(b) if the tax increment financing district is still in existence. If a tax increment financing district that is entitled to a reimbursement under this section is not listed under 15-1-121(8)(b), the reimbursement must be made to that tax increment financing district at the same time as other districts.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under

subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each tax increment financing district. By August 1 following each of those fiscal years, the department shall distribute the amount determined under this subsection (4)(b) to each tax increment financing district as provided in 15-1-121(8) and to any other tax increment financing district that is entitled to a reimbursement under this section.

(5) (a) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the amount determined under subsection (1) for the 6-mill university levy must be added to current collections and reimbursements for the support of the Montana university system as provided in 15-10-108.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for the 6-mill university levy. By August 1 following each of those fiscal years, the department of administration shall transfer the amount determined under this subsection (5)(b) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-108.

(c) Beginning in fiscal year 2013, the department of administration shall transfer the amounts determined under this subsection (5) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-108.

(6) (a) The office of public instruction shall distribute the reimbursement to the countywide retirement fund under 20-9-501 for fiscal year 2012 and all other fiscal years in which rate reductions occur. One-half of the amount must be distributed in November and the remainder in May.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30 following each of those fiscal years, the office of public instruction shall distribute the amount determined under this subsection (6)(b) to the countywide retirement fund.

(c) The amounts determined under this subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the office of public instruction for distribution to the countywide retirement account.

(7) (a) The office of public instruction shall distribute the reimbursement to the county transportation reimbursement under 20-10-146 for fiscal year 2012 and all other fiscal years in which rate reductions occur. The reimbursement must be made at the same time as countywide school transportation block grants are distributed under 20-9-632.

(b) For fiscal year 2012 and all other fiscal years in which rate reductions occur, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30 following each of those fiscal years, the office of public instruction shall distribute the amount determined under this subsection (7)(b) to the county transportation reimbursement.

(c) The amounts determined under this subsection (7) are statutorily appropriated, as provided in 17-7-502, from the general fund to the office of public instruction for distribution to the county transportation reimbursement.

Section 4. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property, except wind generation facilities and biomass generation facilities classified under 15-6-157, used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138~~(5)~~*(6)*; and

(c) centrally assessed companies' allocations except:

(i) electrical generation facilities classified under 15-6-156;

(ii) all property classified under 15-6-157;

(iii) all property classified under 15-6-158 and 15-6-159;

(iv) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

(v) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

(vi) railroad transportation property included in 15-6-145;

(vii) airline transportation property included in 15-6-145; and

(viii) telecommunications property included in 15-6-156.

(2) Class nine property is taxed at 12% of market value."

Section 5. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity*:*

(a) may increase the number of mills to account for a decrease in reimbursements*; and*

(b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

(iv) a levy for the support of a study commission under 7-3-184;

(v) a levy for the support of a newly established regional resource authority; or

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

Section 6. Section 15-23-101, MCA, is amended to read:

"15-23-101. Properties centrally assessed. The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state including but not limited to:

(a) telegraph, telephone, microwave, and electric power or transmission lines;

(b) rate-regulated natural gas transmission or oil transmission pipelines regulated by the public service commission or the federal energy regulatory commission;

(c) common carrier pipelines as defined in 69-13-101 or a pipeline carrier as defined in 49 U.S.C. 15102(2);

(d) natural gas distribution utilities;

(e) the gas gathering facilities specified in 15-6-138~~(5)~~*(6)*;

(f) canals, ditches, flumes, or like properties; and

(g) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines, except bentonite mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

Section 7. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; *[section 3];* 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.

10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

Section 8. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204;

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514; and

(v) for the 2011 biennium only, a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are budgeted in the district general fund but are paid from state fiscal

stabilization funds received pursuant the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(v) property tax reimbursements made pursuant to [section 3(6)];

~~(v)~~*(vi)* any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid~~.~~*;*

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county

superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction."

Section 9. Section 20-9-630, MCA, is amended to read:

"20-9-630. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on*:*

(i) the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999*; and*

(ii) any reimbursement to be made to a school district pursuant to subsection (2).

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate the block grant amount into each district's budget as an anticipated revenue source by fund.

~~(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.~~

~~(2) If the fiscal year 2003 appropriation provided in section 248(1), Chapter 574, Laws of 2001, is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.~~

(2) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the office of public instruction shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to block grant distributions under this section. The total of reimbursement distributions made pursuant to this subsection in a fiscal year must be added to all other distributions to the school district in the fiscal year to determine the distribution for the subsequent fiscal year. The block grant percentage increases in subsections (4)(a) through (4)(c) do not apply to reimbursements made under this subsection for the fiscal year of the first reimbursement but do apply to the block grant amounts in subsequent fiscal years that incorporate reimbursements added in previous fiscal years. For the purpose of this subsection, the fiscal year of the first reimbursement does not include the fiscal year in which the reimbursement under [section 3(3)(b)] is made.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(4) (a) The block grant for the district general fund is equal to the ~~average~~ amount received in fiscal ~~years 2002 and 2003~~ *year 2012, except for the amount received under [section 3(3)(b)],* by the district general fund from the block grants provided for in ~~subsection~~ *subsections* (1) *and (2).* ~~The~~ *Except as provided in subsection (2), the* block grant must be increased by 0.76% in fiscal year ~~2004~~ *2013* and in each succeeding fiscal year.

(b) The block grant for the district transportation fund is ~~equal to one-half of~~ the ~~average~~ amount received in fiscal ~~years 2002 and 2003~~ *year 2012, except for the amount received under [section 3(3)(b)],* by the district transportation fund from the block grants provided for in ~~subsection~~ *subsections* (1) *and (2).* ~~The~~ *Except as provided in subsection (2), the* block grant must be increased by 0.76% in fiscal year ~~2004~~ *2013* and in each succeeding fiscal year.

(c) (i) The combined fund block grant is equal to the ~~average~~ amount received in fiscal ~~years 2002 and 2003~~ *year 2012, except for the amount received under [section 3(3)(b)],* by the district tuition, bus depreciation reserve, building reserve, nonoperating, and adult education funds from the block grants provided for in ~~subsection~~ *subsections* (1) *and (2).* ~~The~~ *Except as provided in subsection (2), the* block grant must be increased by 0.76% in fiscal year ~~2004~~ *2013* and in each succeeding fiscal year.

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district."

Section 10. Section 20-10-146, MCA, is amended to read:

"20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the

county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) countywide school transportation block grants distributed under 20-9-632;

(vi) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vii) federal forest reserve funds allocated under the provisions of 17-3-213; ~~and~~

(viii) property tax reimbursements made pursuant to [section 3(7)]; and

~~(viii)~~*(ix)* other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 12. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 3].

Section 13. Coordination instruction. If both Senate Bill No. 329 and [this act] are passed and approved and if both contain a section that amends 20-9-630, then the sections amending 20-9-630 are void and 20-9-630 must be amended as follows:

"20-9-630. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on*:*

(i) the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999*; and*

(ii) any reimbursement to be made to a school district pursuant to subsection (2).

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate the block grant amount into each district's budget as an anticipated revenue source by fund.

~~(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.~~

~~(2) If the fiscal year 2003 appropriation provided in section 248(1), Chapter 574, Laws of 2001, is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.~~

(2) If the legislature enacts a reimbursement provision that is to be distributed pursuant to this section, the office of public instruction shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to block grant distributions under this section. Except for the reimbursement made under [section 3(3)(b) of Senate Bill No. 372], the total of reimbursement distributions made pursuant to this subsection in a fiscal year must be added to all other distributions to the school district in the fiscal year to determine the distribution for the subsequent fiscal year.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(4) (a) The block grant for the district general fund is equal to the ~~average~~ amount received in fiscal ~~years 2002 and 2003~~ *year 2011* by the district general fund from the block grants provided for in subsection (1) *and the amount received by the district general fund under subsection (2), except the amount received under [section 3(3)(b) of Senate Bill No. 372].* ~~The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(b) The block grant for the district transportation fund is equal to ~~one-half of~~ the ~~average~~ amount received in fiscal ~~years 2002 and 2003~~ *year 2011* by the district transportation fund from the block grants provided for in subsection (1) *and the amount received by the district transportation fund under subsection (2), except the amount received under [section 3(3)(b) of Senate Bill No. 372].* ~~The~~

~~block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(c) (i) The combined fund block grant is equal to the ~~average~~ amount received in fiscal ~~years 2002 and 2003 by the district tuition, bus depreciation reserve, building reserve, nonoperating, and adult education funds from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year~~ *year 2011 and the amount received under subsection (2), except the amount received under [section 3(3)(b) of Senate Bill No. 372].*

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district."

Section 14. Coordination instruction. If both House Bill No. 2 and [this act] are passed and approved, then:

(1) the general fund appropriation for BASE aid in House Bill No. 2 of $526,495,288 is decreased by $1,803,873 in fiscal year 2013;

(2) the general fund appropriation for HB 124 Block Grants in House Bill No. 2 of $52,150,510 is increased by $6,444,852 in fiscal year 2013; and

(3) [section 3(3)(c), (6)(c), and (7)(c) and section 7 of this act] are void.

Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. Effective date. [This act] is effective July 1, 2011.

Section 17. Applicability. [This act] applies to tax years beginning after December 31, 2011.

Section 18. Termination. [Section 3(3)(c), (6)(c), and (7)(c) and section 7] terminate June 30, 2013.

Approved May 13, 2011

CHAPTER NO. 412

[SB 29]

AN ACT GENERALLY PROVIDING FOR THE TRAINING OF PERSONS SELLING OR SERVING ALCOHOLIC BEVERAGES; PROVIDING A PENALTY; REQUIRING CONSIDERATION OF MITIGATING CIRCUMSTANCES; PROVIDING FOR RULEMAKING; AND PROVIDING THAT THE DEPARTMENT OF REVENUE HAS SOLE JURISDICTION FOR THE TRAINING PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Responsible Alcohol Sales and Service Act".

Section 2. Legislative intent. It is the intent of [sections 1 through 9] that retail establishments and manufacturers licensed to sell or serve alcoholic beverages to the public ensure that all licensees and their employees that sell or serve alcoholic beverages are appropriately trained to comply with state law prohibiting the sale or service of alcoholic beverages to persons under 21 years of age and to persons who are intoxicated. [Sections 1 through 9] do not apply to special permits issued under 16-4-301.

Section 3. Definition. As used in [sections 1 through 9], "licensee" means a person or entity licensed by the department to sell alcoholic beverages at retail for either on-premises or off-premises consumption.

Section 4. Notification — violation — penalty. (1) A licensee shall certify annually on its license renewal form that the licensee is in compliance with the provisions of [sections 1 through 9].

(2) A license renewal form that falsely includes information that the licensee and all employees have been trained pursuant to [sections 1 through 9] is a violation of this code.

(3) If, after an investigation under 16-4-406, a licensee is determined to have violated subsection (2), the licensee must be assessed an administrative penalty under 16-4-406 or the penalty for false swearing under 45-7-202.

Section 5. Licensees required to ensure training. A licensee shall:

(1) require each employee who is authorized to sell or serve alcoholic beverages in the normal course of employment and the employee's immediate supervisor to successfully complete training to ensure compliance with state law regarding the sale and service of alcoholic beverages. The training must be completed within 60 days of the employee's date of hire and every 3 years after the employee's initial training.

(2) maintain employment records verifying employee completion of the training required in subsection (1).

Section 6. Responsible server and sales training program. (1) The department shall certify all server and sales training programs that include the following:

(a) effects of alcohol on the human body;

(b) information, including criminal, civil, and administrative penalties, related to 27-1-710 and this code;

(c) procedures for checking identification;

(d) procedures for gathering proper documentation that may affect the licensee's liability;

(e) training for skills to handle difficult situations and to learn evaluation techniques regarding intoxicated persons or others that pose potential liability;

(f) a final test; and

(g) a certificate of completion, which must be provided to participants who pass the final test.

(2) The department may not provide a responsible server and sales training program.

Section 7. Jurisdiction. The implementation and enforcement of any mandatory server and sales training programs in this state is under the exclusive authority and jurisdiction of the department.

Section 8. Penalty. (1) A licensee found as a result of a routine check for compliance with 16-3-301, 16-6-304, or 16-6-305 to be out of compliance with [section 5] shall pay a $50 penalty for a first offense, a $200 penalty for a second offense, and a $350 penalty for a third offense in a 3-year period. The fine must be paid to the department and deposited in the enterprise fund to the credit of the department for administration of [sections 1 through 9].

(2) The department shall consider the following as mitigating circumstances before taking an action pursuant to 16-4-406 against a licensee who is not in compliance with the provisions of [sections 1 through 9]:

(a) the licensee's prior violation history;

(b) the licensee's good faith effort to prevent a violation;

(c) the existence of written policies governing employee conduct; and

(d) whether the evidence of a violation was based solely on the investigating authority creating an opportunity for the violation rather than on complaints received or observed misconduct.

Section 9. Rulemaking. The department shall adopt rules to implement the provisions of [sections 1 through 9].

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 11. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 1 through 9].

Approved May 14, 2011

CHAPTER NO. 413

[SB 100]

AN ACT PROVIDING FOR DISPOSITION OF COMPENSATORY DAMAGES AND INTEREST FROM ANY FUTURE LITIGATION RESULTING FROM THE WRONGFUL USE OR OCCUPATION OF STATE LANDS; CLARIFYING LEGISLATIVE APPROPRIATION AUTHORITY; AMENDING SECTION 77-1-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-117, MCA, is amended to read:

"77-1-117. Disposition of fines *and judgment proceeds.* *(1)* Unless otherwise provided, all money received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state, except money received by a justice's court, must be paid to the department of revenue for deposit in the general fund.

(2) Unless otherwise provided, all money, including interest, awarded by a court as compensatory damages under this title or any of the land laws of this state for the wrongful use or occupation of state lands must be deposited in the account or fund in which the money would have been deposited had the party assessed with the damages complied with the land laws of this state and may be paid out of the account or fund only through an appropriation by the legislature."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to court proceedings commenced after [the effective date of this act].

Approved May 13, 2011

CHAPTER NO. 414

[SB 108]

AN ACT REQUIRING CONSULTATION AND COORDINATION WITH CERTAIN COUNTY AND TRIBAL GOVERNMENTS IN PROPOSED STATE AND FEDERAL POLICY DECISIONS REGARDING LARGE PREDATORS AND LARGE GAME SPECIES; AMENDING SECTION 87-1-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-217, MCA, is amended to read:

"87-1-217. Policy for management of large predators — legislative intent. (1) In managing large predators, the primary goals of the department, in the order of listed priority, are to:

(a) protect humans, livestock, and pets;

(b) preserve and enhance the safety of the public during outdoor recreational and livelihood activities; and

(c) preserve citizens' opportunities to hunt large game species.

(2) As used in this section:

(a) "large game species" means deer, elk, mountain sheep, moose, antelope, and mountain goats; and

(b) "large predators" means bears, mountain lions, and wolves.

(3) With regard to large predators, it is the intent of the legislature that the specific provisions of this section concerning the management of large predators will control the general supervisory authority of the department regarding the management of all wildlife.

(4) For the management of wolves in accordance with the priorities established in subsection (1), the department may use lethal action to take problem wolves that attack livestock~~, so long as~~ *if* the state objective for breeding pairs has been met. For the purposes of this subsection, "problem wolves" means any individual wolf or pack of wolves with a history of livestock predation.

(5) The department shall ensure that county commissioners and tribal governments in areas that have identifiable populations of large predators have the opportunity for consultation and coordination with state and federal agencies prior to state and federal policy decisions involving large predators and large game species."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 14, 2011

CHAPTER NO. 415

[SB 136]

AN ACT REVISING RESIDENCY REQUIREMENTS FOR HUNTING LICENSES; AMENDING SECTIONS 87-1-290, 87-2-514, AND 87-2-515, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-290, MCA, is amended to read:

"87-1-290. (Effective March 1, 2011) Hunting access account. (1) There is a hunting access account in the state special revenue fund. Funds deposited in this account may be used only for the purpose of funding any hunting access program established by law or by the department through administrative rule.

(2) The following funds must be deposited in the account:

(a) 25% of the fee for Class B-10 nonresident big game combination licenses pursuant to 87-2-505(1)(c) and 25% of the fee for Class B-11 nonresident deer combination licenses pursuant to 87-2-510(1)(b);

(b) 25% of the fee for hunting licenses issued to nonresident ~~children~~ *relatives* of a resident pursuant to 87-2-514; and

(c) the hunting access enhancement fees assessed pursuant to 87-2-202(3)(c) and (3)(d).

(3) Any interest or income earned on the account must be deposited in the account."

Section 2. Section 87-2-514, MCA, is amended to read:

"87-2-514. Nonresident ~~child~~ *relative* of resident allowed to purchase nonresident licenses at reduced cost — *definitions.* (1) *For the purposes of this section, the following definitions apply:*

(a) "Nonresident relative of a resident" means a person born in Montana who is the natural or adoptive child, sibling, or parent of a resident but is not a resident.

(b) "Resident" means a resident as defined in 87-2-102.

(2) Except as otherwise provided in this chapter, a ~~person who is not a resident, as defined in 87-2-102, but who is the natural or adopted child~~ *nonresident relative* of a resident~~, as defined in 87-2-102, and~~ who meets the qualifications of subsection ~~(3)~~ *(5)* may purchase*:*

(a) a Class B nonresident fishing license~~,~~*;*

(b) a Class B-1 nonresident upland game bird license~~, and~~*;*

(c) a Class B-7 nonresident deer A tag*; and*

(d) ~~at the reduced cost specified in subsection (2) and may purchase~~ a Class B-15 nonresident ~~child's~~ elk license as provided in 87-2-515.

(3) This section does not allow a nonresident ~~child~~ *relative* of a resident to purchase nonresident combination licenses at a reduced price.

~~(2)~~*(4)* The fee for a nonresident license purchased pursuant to subsection ~~(1)~~ *(2)* is ~~twice~~ *four times* the amount charged for an equivalent resident license. The nonresident ~~child~~ *relative of a resident* shall also purchase a nonresident wildlife conservation license as prescribed in 87-2-202 and pay the nonresident hunting access enhancement fee in 87-2-202(3)(d) if the nonresident ~~child~~ *relative of a resident* purchases a hunting license.

~~(3)~~*(5)* To qualify for a license pursuant to subsection ~~(1)~~ *(2)*, a nonresident ~~child~~ *relative* of a resident shall apply at any department regional office or at the department's state office in Helena and present proof of the following:

(a) a birth certificate verifying the applicant's birth in Montana *or documentation that the applicant was born to parents who were residents at the time of birth*;

~~(b) a high school diploma from a Montana public, private, or home school or certified verification that the applicant has passed the general educational development test in Montana~~

(b) evidence that the person previously held a Montana resident hunting or fishing license or has passed a hunter safety course in Montana pursuant to 87-2-105; and

(c) proof that the applicant ~~has a natural or adoptive parent who is a current Montana resident, as defined in 87-2-102~~ *is a nonresident relative of a resident*.

~~(4) A qualified nonresident child of a resident may purchase licenses pursuant to subsection (1) for up to 6 license years after receiving a diploma or passing the general educational development test as provided in subsection (3)(b).~~

~~(5) A nonresident child of a resident who has been issued a hunting license pursuant to this section is not eligible to apply for or be issued any nonresident special permit.~~

~~(6) A nonresident child of a resident who has been issued a hunting license pursuant to this section must be accompanied by a licensed resident family member while hunting in the field.~~"

Section 3. Section 87-2-515, MCA, is amended to read:

"87-2-515. Class B-15 nonresident ~~child's~~ elk license. (1) Except as otherwise provided in this chapter, a nonresident ~~child~~ *relative* of a resident who is qualified to purchase licenses pursuant to 87-2-514 may purchase a Class B-15 nonresident ~~child's~~ elk license for ~~twice~~ *four times* the amount charged for a resident Class A-5 elk tag.

(2) A Class B-15 license entitles the holder to hunt elk in areas designated by the commission, at the times and upon the terms set forth by the commission, and to possess the carcass of an elk authorized by the license as set forth in department rules."

Section 4. Effective date. [This act] is effective March 1, 2012.

Approved May 13, 2011

CHAPTER NO. 416

[SB 143]

AN ACT REVISING MONTANA GRIZZLY BEAR POLICY TO AVOID CONFLICTS WITH HUMANS AND LIVESTOCK; AMENDING SECTION 87-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-301, MCA, is amended to read:

"87-5-301. ~~Policy toward grizzly~~ *Grizzly* bear — *findings — policy.* *(1) The legislature finds that:*

(a) grizzly bears are a recovered population and thrive under responsive cooperative management;

(b) grizzly bear conservation is best served under state management and the local, state, tribal, and federal partnerships that fostered recovery; and

(c) successful conflict management is key to maintaining public support for conservation of the grizzly bear.

(2) It is ~~hereby declared~~ the policy of the state ~~of Montana~~ to*:* ~~protect, conserve, and~~

(a) manage *the* grizzly bear ~~as a rare species of Montana wildlife~~ *to avoid conflicts with humans and livestock; and*

(b) use proactive management to control grizzly bear distribution and prevent conflicts, including trapping and lethal measures."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved May 14, 2011

CHAPTER NO. 417

[SB 277]

AN ACT CLARIFYING THAT THE BEEF CHECK-OFF IS TO BE PAID ONLY ON CATTLE SOLD; LIMITING THE FEE CHARGEABLE BY THE DEPARTMENT OF LIVESTOCK FOR COLLECTING THE NATIONAL BEEF CHECK-OFF; REQUIRING THE LEGISLATIVE AUDITOR TO AUDIT THE

DEPARTMENT OF LIVESTOCK'S DIRECT COSTS FOR COLLECTING THE BEEF CHECK-OFF; AMENDING SECTIONS 81-1-102, 81-8-901, AND 81-8-902, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-1-102, MCA, is amended to read:

"81-1-102. Duties and powers of department — fees based on costs. (1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation that, in the judgment of the department, fosters ~~this~~ *the livestock* industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) ~~The~~ *Except as provided in 81-8-901, the* department shall by rule establish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134.

(3) The department shall perform the duties assigned to the department relating to the administration and regulation of alternative livestock ranches."

Section 2. Section 81-8-901, MCA, is amended to read:

"81-8-901. Beef promotion and marketing — powers and duties of department — *contract.* *(1)* The department shall:

~~(1)~~*(a)* ~~cooperate and~~ *enter into a* contract with the Montana beef council ~~for collecting~~ *to collect on behalf of the beef council* an assessment of $1 for each head of Montana ~~livestock~~ *cattle sold* as established in the national Beef Promotion and Research Act of 1985*, 7 U.S.C. 2901 through 2911*, also referred to as the national beef check-off*, and 7 CFR, part 1260, subpart A.;*

(b) adopt rules necessary for the administration of this section.

(2) (a) ~~Any~~ *Except as provided in subsection (2)(b), the* contract agreed to *under this section* between the department and the *Montana* beef council must *include a provision that the beef council shall pay a fee, not to exceed 5% of the total check-off funds collected, to* reimburse the department for all expenses *directly* incurred through ~~the~~ collection *of the check-off* ~~activities~~ *as verified by the legislative auditor*.

(b) The department is not obligated under this section or any other state law to contract for collection of the fee if the department's direct collection costs as verified by the legislative auditor exceed 5% of the check-off funds collected.

~~(2) adopt rules necessary for the administration of this section.~~"

Section 3. Section 81-8-902, MCA, is amended to read:

"81-8-902. Department not liable for collection of assessment — inspection. (1) The department and its agents and employees are not responsible or liable for ~~the collection or payment of money~~ *a livestock owner's compliance with the requirement to pay the assessment* due to the Montana beef council pursuant to 81-8-901~~(1)~~ if 81-8-901 and this section are carried out in good faith.

(2) The department may not refuse to inspect livestock if the livestock owner refuses to pay the assessment imposed under 81-8-901~~(1)~~."

Section 4. Effective date. [This act] is effective July 1, 2011.

Approved May 14, 2011

CHAPTER NO. 418

[SB 329]

AN ACT GENERALLY REVISING K-12 EDUCATION LAWS; CREATING THE PATHWAY TO EXCELLENCE PROGRAM; AMENDING THE STRUCTURE OF ESTIMATING AND ALLOCATING OIL AND NATURAL GAS PRODUCTION TAXES FOR SCHOOLS; CHANGING THE MONTANA VIRTUAL ACADEMY TO THE MONTANA DIGITAL ACADEMY; LIMITING A SCHOOL DISTRICT'S FUND BALANCE REAPPROPRIATED TO A PERCENTAGE OF THE MAXIMUM GENERAL FUND BUDGET; ALLOWING A SCHOOL DISTRICT A ONE-TIME TRANSFER OF GENERAL FUND MONEY; PROVIDING AN INFLATIONARY INCREASE TO THE BASIC ENTITLEMENT AND TOTAL PER-ANB ENTITLEMENT; CREATING A STATE SCHOOL OIL AND NATURAL GAS IMPACT ACCOUNT; CREATING A COUNTY SCHOOL OIL AND NATURAL GAS IMPACT FUND; ALLOWING FOR MULTIDISTRICT AGREEMENTS; DEFINING "MULTIDISTRICT COOPERATIVE"; ALLOWING TRUSTEES TO DECIDE THE DISPOSITION OF INACTIVE TUITION FUNDS; EXEMPTING PARTICIPANTS IN A COOPERATIVE PURCHASING GROUP FROM CERTAIN COMPETITIVE BIDDING REQUIREMENTS; ALLOWING THE TRANSFER OF FUNDS RAISED BY A VOTED OR PERMISSIVE LEVY IF VOTERS APPROVE THE TRANSFER IN AN ELECTION; ALLOWING TRUSTEES TO IMPOSE AN OVER-BASE LEVY IN SUPPORT OF A DISTRICT'S GENERAL FUND BUDGET IN AN AMOUNT NOT TO EXCEED REVENUE AMOUNTS PREVIOUSLY AUTHORIZED BY THE VOTERS IN THE PREVIOUS 5 YEARS; ELIMINATING THE PERCENTAGE OF GROWTH FOR SCHOOL DISTRICT BLOCK GRANTS; REVISING THE USE OF THE SCHOOL FACILITY AND TECHNOLOGY ACCOUNT; PROVIDING RULEMAKING AUTHORITY; REMOVING THE REQUIREMENT THAT TRUSTEES SUBMIT TO ELECTORS THE PROPOSITION OF TRANSFERRING BUS DEPRECIATION RESERVE FUNDS TO ANOTHER FUND; REQUIRING A SCHOOL DISTRICT TO REPORT BUDGET AMENDMENTS TO THE LEGISLATURE AND THE BOARD OF PUBLIC EDUCATION; LIMITING A SCHOOL DISTRICT'S ENDING FUND BALANCE TO A SPECIFIC PERCENTAGE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-36-332, 20-3-363, 20-7-102, 20-7-1201, 20-9-104, 20-9-161, 20-9-201, 20-9-204, 20-9-208, 20-9-306, 20-9-308, 20-9-353, 20-9-507, 20-9-516, 20-9-630, AND 20-10-147, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-332, MCA, is amended to read:

"15-36-332. Distribution of taxes to taxing units — appropriation. (1) (a) ~~By~~ *Subject to [section 8], by* the dates referred to in subsection (6) *of this section*, the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) By the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil and gas natural resource distribution account under 15-36-331(2)(b) as provided in subsection (8) of this section.

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school

retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d) *and subject to the provisions of [section 8]*.

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas *production* taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) ~~(a)~~ Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district ~~in the relative proportion of the mill levy for each fund~~ *as provided in [section 8]*.

~~(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.~~

(6) ~~The~~ *Subject to [section 8], the* department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed

under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111.

(8) The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

(9) The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund."

Section 2. Section 20-3-363, MCA, is amended to read:

"20-3-363. ~~Interdistrict~~ *Multidistrict* agreements — fund transfers. (1) The *boards of* trustees of any two *or more* school districts ~~that have unified pursuant to 20-6-312, any two school districts that have created a joint board of trustees pursuant to 20-3-361, or a high school district and any elementary school district associated with that high school district~~ may enter into ~~an interdistrict~~ *a multidistrict* agreement *to create a multidistrict cooperative to perform any services, activities, and undertakings of the participating districts and* to provide for the joint funding and operation and maintenance of ~~both~~ *all participating* districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section. An agreement must be approved by the ~~board~~ *boards* of trustees of ~~both~~ *all participating* districts by ~~February 1~~ *April 1* of the ~~current fiscal~~ year *in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies*.

(2) All expenditures in support of the ~~interdistrict~~ *multidistrict* agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each *participating* district *of the multidistrict cooperative* may transfer funds into the interlocal cooperative fund from the general fund *or any other budgeted fund* of the district. Transfers to the interlocal cooperative fund from each *participating* school ~~district~~ *district's general fund* are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund. ~~and~~ *All transfers* must be completed by ~~February 1~~ *April 1* of the ~~current fiscal~~ year *in which the agreement is executed and by April 1 in any subsequent year to which the agreement applies*.

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the ~~general~~ *budgeted* fund from which the transfer was made.

(4) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

(5) As used in this title, "multidistrict cooperative" means a public entity created by two or more school districts executing a multidistrict agreement under this section or any school district or other public entity participating in an interlocal cooperative agreement under the provisions of Title 20, chapter 9, part 7, as either a coordinating or a cooperating agency."

Section 3. Montana pathway to excellence program — purpose. (1) [Sections 3 and 4] may be known as the pathway to excellence program.

(2) The purpose of the pathway to excellence program is to promote educational excellence in Montana's public schools through data-driven decisionmaking.

(3) It is the intent of the program that Montana K-12 public education remain focused on continuous improvement and increased academic achievement for students in public schools.

Section 4. Transparency and public availability of public school performance data — reporting. (1) The office of public instruction shall develop a publicly available data system that displays an educational data profile for each school district.

(2) Each school district's educational profile must include, at a minimum, the following elements:

(a) school district contact information and links to district websites, when available;

(b) state criterion-referenced testing results;

(c) program and course offerings;

(d) student enrollment and demographics by grade level; and

(e) graduation rates.

(3) Each school district shall annually report to the office of public instruction and publish and post on the school district's internet website the following district data for the preceding school year:

(a) the number and type of employee positions, including administrators;

(b) for the current employee in each position:

(i) the total amount of compensation paid to the employee by the district. The total amount of compensation includes but is not limited to the employee's base wage or salary, overtime pay, and other income from school-sanctioned extracurricular activities, including coaching and similar activities; and

(ii) the certification held by and required of the employee;

(c) the student-teacher ratio by grade;

(d) (i) the amount, by category, spent by the district for operation and maintenance, stated in total cost and cost per square foot; and

(ii) the amount of principal and interest paid on bonds;

(e) the total district expenditures per student;

(f) the total budget for all funds;

(g) the total number of students enrolled and the average daily attendance;

(h) the total amount spent by the district on extracurricular activities and the total number of students that participated in extracurricular activities; and

(i) the number of students that entered the 9th grade in the school district but did not graduate from a high school in that district and for which the school district did not receive a transfer request. For reporting purposes, the students identified under this subsection (3)(i) are considered to have dropped out of school.

(4) Each school district shall also post on the school district's internet website a copy of every working agreement the district has with any organized labor organization and the district's costs, if any, associated with employee union representation, collective bargaining, and union grievance procedures and litigation resulting from union employee grievances.

(5) If a school district does not have an internet website, the school district shall publish the information required under subsections (2) and (3) in printed form and provide a copy of the information upon request at the cost incurred by the school district for printing only.

(6) The superintendent of public instruction shall continually enhance the statewide data system to support the collection of data from schools, implement a data collection plan to reduce redundant data requests, increase data use from the centralized system by various functions within the office of public instruction, and promote transparency in reporting to schools, school districts, communities, and the public. Actionable data analysis must be produced to promote academic improvement.

(7) The superintendent of public instruction shall gather, maintain, and distribute longitudinal, actionable data in the following areas:

(a) statewide student identifier;

(b) student-level enrollment data, including average daily attendance;

(c) student-level statewide assessment data;

(d) information on untested students;

(e) student-level graduation and dropout data;

(f) ability to match student-level K-12 and higher education data;

(g) a statewide data audit system;

(h) a system to track student achievement with a direct teacher-to-student match to help track, report, and create opportunities for improved individual student performance;

(i) student-level course completion data, including transcripts, to assess career and college readiness; and

(j) student-level ACT results, scholastic achievement test results, and advanced placement exam data.

(8) The superintendent of public instruction shall emphasize the creation of and distribution of individual diagnostic data for each student in a manner that is timely and protects the privacy rights of students and families as they relate to education so that school districts may use the data to support timely academic intervention as needed and to otherwise improve the academic achievement of the students of each school district.

(9) On or before June 30, 2013, the superintendent of public instruction shall begin presenting longitudinal data on academic achievement and shall develop plans for a measurement of growth for the statewide student assessment required by the board of public education.

Section 5. Section 20-7-102, MCA, is amended to read:

"20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of each school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may be granted only to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in 20-9-306~~(14)(e)(ii)~~*(14)(a)(iii)(B)*."

Section 6. Section 20-7-1201, MCA, is amended to read:

"20-7-1201. Montana ~~virtual~~ *digital* academy — purposes — governance. (1) There is a Montana ~~virtual~~ *digital* academy at a unit of the Montana university system.

(2) The purposes of the Montana ~~virtual~~ *digital* academy are to:

(a) make distance learning opportunities available to all school-age children through public school districts in the state of Montana;

(b) offer high-quality instructors who are licensed and endorsed in Montana and courses that are in compliance with all relevant education and distance learning rules, standards, and policies; and

(c) emphasize the core subject matters required under the accreditation standards, offer advanced courses for dual credit in collaboration with the Montana university system, and offer enrichment courses.

(3) The Montana ~~virtual~~ *digital* academy must be governed by a board with equal representation from:

(a) the commissioner of higher education or a designee;

(b) the superintendent of public instruction or a designee;

(c) a Montana-licensed and Montana-endorsed classroom teacher appointed by the board of public education;

(d) a Montana-licensed school district administrator appointed by the board of public education;

(e) a trustee of a Montana school district appointed by the board of public education;

(f) the dean of the school of education of the hosting unit of the Montana university system or a designee as a nonvoting member; and

(g) the two officers provided for in subsection (5) as nonvoting members.

(4) The governing board shall elect a presiding officer and vice presiding officer to 2-year terms without limitation on the number of terms.

(5) The governing board shall hire a program director and a curriculum director who shall serve as chief executive officer and vice chief executive officer respectively on the governing board in a nonvoting capacity. The program director shall develop and, upon approval of the governing board, implement policies and guidelines for the Montana ~~virtual~~ *digital* academy pertaining to:

(a) course offerings;

(b) software and hardware selection;

(c) instructor selection;

(d) partnering school agreements;

(e) instructor training and curriculum development;

(f) course evaluation;

(g) grant opportunities; and

(h) other activities that are essential to the success of a statewide distance learning program."

Section 7. Section 20-9-104, MCA, is amended to read:

"20-9-104. General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections ~~(5) and (6)~~ *(7) and (8)*, the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection ~~(5)~~ *(7)* may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b)~~.~~ *. up to an amount not exceeding 15% of a school district's maximum general fund budget.*

(5) For fiscal year 2012, any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state to be deposited in the state general fund.

(6) Beginning in fiscal year 2013, any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:

(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622;

(b) 5% of the excess amount must be remitted to the state to be deposited in the state school oil and natural gas impact account provided for in [section 9]; and

(c) 25% of the excess amount must be deposited in the county school oil and natural gas impact fund provided for in [section 10].

~~(5)~~*(7)* The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

~~(6)~~*(8)* The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

(9) Prior to June 30, 2011, a school district may transfer any general fund money in excess of 15% of the fiscal year 2011 general fund budget that is not needed to fund the budget to any budgeted fund considered appropriate by the trustees."

Section 8. Oil and natural gas production taxes for school districts — allocation and limits. (1) The maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) The department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section.

(4) For fiscal year 2012, any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) must be deposited in the guarantee account as provided in 20-9-622.

(5) Subject to the limitation in subsection (1), the trustees shall budget and allocate the oil and natural gas production taxes received by the district as follows:

(a) for fiscal year 2012, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 25% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(b) for fiscal year 2013, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 35% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(c) for fiscal year 2014, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 45% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(d) for each succeeding fiscal year, the trustees shall budget in the general fund an amount of oil and natural gas production taxes equal to the lesser of 55% of the total oil and natural gas production taxes received by the district in the prior year or the general fund levy requirement;

(e) oil and natural gas production taxes received by the district must be deposited in the general fund until the budgeted amount is reached; and

(f) all remaining oil and natural gas production tax revenue may be deposited in any budgeted fund.

(6) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall.

(7) Beginning in fiscal year 2013, for any amount retained by the department of revenue in compliance with the limitation in subsection (1), the amount retained must be allocated as follows:

(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in [section 9]; and

(c) 25% of the retained amount must be distributed to the counties for deposit in the county school oil and natural gas impact fund provided for in [section 10].

Section 9. State school oil and natural gas impact account. (1) There is a state school oil and natural gas impact account in the state special revenue

fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are not receiving oil and natural gas production taxes under 15-36-331 but are impacted by contiguous counties that are benefiting from receipt of oil and natural gas production taxes.

(2) There must be deposited in the account oil and natural gas production taxes, if any, pursuant to [section 8(3)] and any amounts pursuant to [section 7].

(3) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

(a) an unusual enrollment increase as determined pursuant to 20-9-314;

(b) a district's need to hire new teachers or staff as a result of increased enrollment;

(c) the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or

(d) major maintenance for a school or district.

(4) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:

(a) the local district's or school's need;

(b) the severity of the energy development impacts;

(c) availability of funds in the account; and

(d) the applicant district's ability to meet the needs identified in subsection (3).

(5) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.

(6) The amount in the account may not exceed $7.5 million. Any amount over $7.5 million must be deposited in the state general fund.

Section 10. County school oil and natural gas impact fund. (1) The governing body of a county receiving an allocation under [section 7] and [section 8(3)] shall establish a county school oil and natural gas impact fund.

(2) Money received by a county pursuant to [section 7] and [section 8(3)] must remain in the fund and may not be appropriated by the governing body until:

(a) the amount of oil and natural gas production taxes received by a school district for the fiscal year is 30% or less of the amount of the average received by the district in the previous 4 fiscal years;

(b) the average price of oil is $50 a barrel or less for the fiscal year; or

(c) the production of oil in the county drops 50% or more below the average oil production in the county during the immediately preceding 5-year period.

(3) Within 30 days of any of the circumstances described in subsections (2)(a) through (2)(c) occurring, the governing body of the county shall allocate 80% of the money proportionally to affected high school districts and elementary school districts in the county.

(4) The governing body of the county may use 20% of the money in the fund to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the reduction in the price of oil described in subsection (2)(b);

(b) offset property tax levy increases that are directly caused by the cessation or reduction of oil and natural gas activity;

(c) promote diversification and development of the economic base within the jurisdiction;

(d) attract new industry to the area impacted by the changes in oil and natural gas activity described in subsection (2); or

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in oil and natural gas activity described in subsection (2).

(5) Except as provided in subsection (4)(b), money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(6) Money in the fund must be invested as provided by law. Interest and income from the investment of money in the fund must be credited to the fund.

Section 11. Section 20-9-161, MCA, is amended to read:

"20-9-161. Definition of budget amendment for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year;

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents;

(c) delinquent taxes from a prior school fiscal year; and

(d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the district; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting*:*

(a) the safety of the students and district employees*;* or

(b) the educational functions of the district. *Any budget amendment adopted pursuant to this subsection (6)(b) that in combination with other budget amendments within the same school fiscal year exceeds 10% of the district's adopted general fund budget must be reported by the school district to the education and local government interim committee and the board of public education with an explanation of why the budget amendment is necessary.*"

Section 12. Section 20-9-201, MCA, is amended to read:

"20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed

account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund, endowment fund, litigation reserve fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) ~~(a) Except as provided in subsection (3)(b) or as otherwise provided by law, whenever~~ *Except as otherwise provided by law, whenever* the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to any fund considered appropriate by the trustees if the fund does not have a cash or fund balance deficit.

~~(b) If the trustees of a district determine that its tuition fund is inactive and will no longer be used, the trustees shall close the fund by transferring any cash and account balances to the district's miscellaneous programs fund if the tuition fund does not have a cash or fund balance deficit.~~"

Section 13. Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids — *exceptions*. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district, with the exception of officiating at athletic competitions under the auspices of the Montana officials association.

(2) For the purposes of subsection (1):

(a) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not

reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered; and

(b) "pecuniary interest" does not include holding an interest of 10% or less in a corporation.

(3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in subsections (4) and ~~(7)~~ *(6)* of this section, whenever any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done or the purchase made must be by contract if the sum exceeds $50,000.

(b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement *for bids under this subsection (3)(b)* must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an attorney;

(iv) a consulting actuary;

(v) a private investigator licensed by any jurisdiction;

(vi) a claims adjuster;

(vii) an accountant licensed under Title 37, chapter 50; or

(viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. ~~The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids~~ *A district participating in a cooperative purchasing group may purchase supplies and services through the group without complying with the provisions of subsection (3) if the cooperative purchasing group has a publicly available master list of items available with pricing included and provides an opportunity at least twice yearly for any vendor, including a Montana vendor, to compete, based on a lowest responsible bidder standard, for inclusion of the vendor's supplies and services on the cooperative purchasing group's master list*.

~~(5) Except as provided in Title 18, chapter 2, part 5, whenever bidding is required, the contract must be awarded to the lowest responsible bidder, except that any or all bids may be rejected.~~

~~(6)~~*(5)* This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

~~(7)~~*(6)* Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract."

Section 14. Section 20-9-208, MCA, is amended to read:

"20-9-208. Transfers among appropriation items of fund — transfers from fund to fund. (1) Whenever it appears to the trustees of a district that the appropriated amount of an item of a budgeted fund of the final budget or a budget amendment is in excess of the amount actually required during the school fiscal year for the appropriation item, the trustees may transfer any of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Unless otherwise restricted by a specific provision in this title, transfers may be made between different funds of the same district or between the final budget and a budget amendment under one of the following circumstances:

(a) (i) Except as provided in subsection (2)(a)(ii), transfers may be made from one budgeted fund to another budgeted fund or between the final budget and a budget amendment for a budgeted fund whenever the trustees determine, in their discretion, that the transfer of funds is necessary to improve the efficiency of spending within the district or when an action of the trustees results in savings in one budgeted fund that can be put to more efficient use in another budgeted fund. Transfers may not be made with funds approved by the voters or with funds raised by a nonvoted levy unless*:*

(A) the transfer is within or directly related to the purposes for which the funds were raised~~. Before a transfer can occur, the trustees shall~~ *and the trustees* hold a properly noticed hearing to accept public comment on the transfer*; or*

(B) the transfer is approved by the qualified electors of the district in an election called for the purpose of approving the transfer, in which case the funds may be spent for the purpose approved on the ballot.

(ii) Unless otherwise authorized by a specific provision in this title, transfers from the general fund to any other fund and transfers to the general fund from any other fund are prohibited.

(b) Transfers may be made from one nonbudgeted fund to another nonbudgeted fund whenever the trustees determine that the transfer of funds is necessary to improve the efficiency of spending within the district. Transfers may not be made with funds restricted by state or federal law unless the transfer is in compliance with any restrictions or conditions imposed by state or federal law. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

(3) The trustees shall enter the authorized transfers upon the permanent records of the district.

(4) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a

nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred."

Section 15. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment; and

(f) the total American Indian achievement gap payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) *(a)* "Basic entitlement" means:

~~(a)~~*(i)* for each high school district:

~~(i)~~*(A)* ~~$246,085~~ *$256,003* for fiscal year ~~2010~~ *2012*; ~~and~~

~~(ii)~~*(B)* ~~$253,468 for each succeeding fiscal year;~~ *$262,224 for fiscal year 2013; and*

(C) except as provided in subsection (6)(b), $260,099 for each succeeding fiscal year;

~~(b)~~*(ii)* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

~~(i)~~*(A)* ~~$22,141~~ *$23,033* for fiscal year ~~2010~~ *2012*;

~~(ii)~~*(B)* ~~$22,805 for each succeeding fiscal year; and~~ *$23,593 for fiscal year 2013; and*

(C) except as provided in subsection (6)(b), $23,402 for each succeeding fiscal year;

~~(c)~~*(iii)* for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

~~(i)~~*(A)* for kindergarten through grade 6 elementary program:

~~(A)~~*(I)* ~~$22,141~~ *$23,033* for fiscal year ~~2010~~ *2012*; ~~and~~

~~(B)~~*(II)* ~~$22,805 for each succeeding fiscal year; plus~~ *$23,593 for fiscal year 2013; and*

(III) except as provided in subsection (6)(b), $23,402 for each succeeding fiscal year; plus

~~(ii)~~*(B)* for an approved and accredited junior high school program, 7th and 8th grade program, or middle school:

~~(A)~~*(I)* ~~$62,704~~ *$65,231* for fiscal year ~~2010~~ *2012*; ~~and~~

~~(B)~~*(II)* ~~$64,585 for each succeeding fiscal year.~~ *$66,816 for fiscal year 2013; and*

(III) except as provided in subsection (6)(b), $66,275 for each succeeding fiscal year.

(b) If fiscal year 2012 general fund revenue, including transfers in, reflected in the audited comprehensive annual financial report exceeds $1,766,500,000, then the entitlements for fiscal year 2013 in this subsection (6) are the amounts to be paid for succeeding fiscal years.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying $200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total Indian education for all payment" means the payment resulting from multiplying $20.40 times the ANB of the district or $100 for each district, whichever is greater, as provided for in 20-9-329.

(14) *(a)* "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

~~(a)~~*(i)* for a high school district or a K-12 district high school program, a maximum rate of ~~$6,097~~ *$6,343* for fiscal year ~~2010~~ *2012,* ~~and $6,280~~ *$6,497 for fiscal year 2013, and except as provided in subsection (14)(b), $6,444* for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

~~(b)~~*(ii)* for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of ~~$4,763~~ *$4,955* for fiscal year ~~2010~~ *2012,* ~~and $4,906~~ *$5,075 for fiscal year 2013, and except as provided in subsection (14)(b), $5,034* for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

~~(c)~~*(iii)* for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

~~(i)~~*(A)* a maximum rate of ~~$4,763~~ *$4,955* for fiscal year ~~2010~~ *2012,* ~~and $4,906~~ *$5,075 for fiscal year 2013, and except as provided in subsection (14)(b), $5,034* for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

~~(ii)~~*(B)* a maximum rate of ~~$6,097~~ *$6,343* for fiscal year ~~2010~~ *2012,* ~~and $6,280~~ *$6,497 for fiscal year 2013, and except as provided in subsection (14)(b), $6,444* for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(b) If the fiscal year 2012 general fund revenue, including transfers in, reflected in the audited comprehensive annual financial report exceeds $1,766,500,000, then the entitlements for fiscal year 2013 in this subsection (14) are the amounts to be paid for succeeding fiscal years.

(15) "Total quality educator payment" means the payment resulting from multiplying $3,036 for fiscal year 2008 and $3,042 for each succeeding fiscal year times the number of full-time equivalent educators as provided in 20-9-327."

Section 16. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and maximum general fund budgets. (1) (a) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. The trustees of a district may adopt a general fund budget up to the maximum general fund budget or the previous year's general fund budget, whichever is greater.

(b) For purposes of the budget limitation in subsection (1)(a), the trustees may add any increase in state funding for the general fund payments in 20-9-327 through 20-9-330 to the district's previous year's general fund budget.

(2) Whenever the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and to increase the over-BASE budget levy *over revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years* to support the

general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 17. Section 20-9-353, MCA, is amended to read:

"20-9-353. Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt an over-BASE budget amount for the district general fund that does not exceed the general fund budget limitations, as provided in 20-9-308.

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1), any increase in local property taxes authorized by 20-9-308(4) *over revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years* must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements or of the general fund payments established in 20-9-327 through 20-9-330 approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

(3) If the proposition on any additional financing for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

(4) All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

(5) If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount, as allowed by 20-9-308, to the electors of the

district, the trustees shall comply with the provisions of subsections (2) through (4) of this section."

Section 18. Section 20-9-507, MCA, is amended to read:

"20-9-507. Miscellaneous programs fund. (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324, other than money under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the district, shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, indirect cost recoveries, ~~the transfer of a fund balance from a tuition fund closed under 20-9-201,~~ or a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement~~, the transfer of a tuition fund balance,~~ or a local government severance tax payment, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall maintain a separate accounting for each local, state, or federal grant project~~, funds transferred from a closed tuition fund,~~ and the indirect cost recoveries.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Section 19. Section 20-9-516, MCA, is amended to read:

"20-9-516. School facility and technology account. (1) There is a school facility and technology account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools for:

(a) major deferred maintenance;

(b) improving energy efficiency in school facilities;

(c) critical infrastructure in school districts;

(d) emergency facility needs; ~~and~~

(e) technological improvements*; and*

(f) state reimbursement for school facilities as provided in 20-9-371.

(2) There must be deposited in the account:

(a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year;

(b) the mineral royalties transferred from the guarantee account as provided in 20-9-622; and

(c) the rental income received from power site leases as provided in 77-4-208."

Section 20. Section 20-9-630, MCA, is amended to read:

"20-9-630. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate the block grant amount into each district's budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

~~(2) If the fiscal year 2003 appropriation provided in section 248(1), Chapter 574, Laws of 2001, is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.~~

~~(3)~~*(2)* Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

~~(4)~~*(3)* (a) The block grant for the district general fund is equal to the ~~average~~ amount received in fiscal ~~years 2002 and 2003~~ *year 2011* by the district general fund from the block grants provided for in subsection (1). ~~The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(b) The block grant for the district transportation fund is equal to ~~one-half of~~ the ~~average~~ amount received in fiscal ~~years 2002 and 2003~~ *year 2011* by the district transportation fund from the block grants provided for in subsection (1). ~~The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(c) (i) The combined fund block grant is equal to the ~~average~~ amount received in fiscal ~~years 2002 and 2003~~ *year 2011.* ~~by the district tuition, bus depreciation reserve, building reserve, nonoperating, and adult education funds from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.~~

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district."

Section 21. Section 20-10-147, MCA, is amended to read:

"20-10-147. Bus depreciation reserve fund. (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio. The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county

superintendent to the county commissioners on the fourth Monday of August as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses, to replace the buses or radios, or for the purchase of an additional bus as provided in subsection (1), for which the bus depreciation reserve fund was created.

~~(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer.~~"

Section 22. Ending fund balance limits. (1) Beginning July 1, 2016, the combined ending fund balance for all budgeted funds of a school district may not exceed 300% of the maximum general fund budget. The 300% limit is not applicable to the building reserve fund, the debt service fund, or the bus depreciation reserve fund.

(2) The county superintendent shall, upon completion of a school fiscal year, redistribute any amounts in excess of the 300% limit among any other school districts in the same county whose combined ending fund balance for all budgeted funds included in subsection (1) has not exceeded the 300% limit. The county superintendent shall redistribute funds equally to the school districts qualifying for redistribution on a per-quality-educator basis, calculated by dividing the total funds by the total number of quality educators, as defined in 20-4-502, employed by the qualifying school districts in the county in the immediately preceding school fiscal year. School districts receiving the funds may place the funds in any budgeted fund of the district at the discretion of the board of trustees of each district.

(3) Unless an exception is granted under subsection (5), upon completion of a school fiscal year, a school district with combined ending fund balances in excess of the 300% limit shall cooperate with the county superintendent in effectuating the redistribution of excess funds as provided in subsection (2). A school district may make the payment required under this subsection from any fund or funds of the district other than the debt service fund, the building reserve fund, and the bus depreciation reserve fund.

(4) Any funds that cannot be redistributed within a county without causing a school district in the county to exceed the 300% limit must be remitted by the county treasurer to the state for deposit in the guarantee account provided for in 20-9-622.

(5) In accordance with 20-9-161, a school district shall report to the education and local government interim committee for any exception taken to the limits prescribed by subsection (1) of this section.

(6) This section does not apply to school districts that are in a nonoperating status under 20-9-505 or that are in the first year of operation after reopening under 20-6-502 or 20-6-503.

(7) Beginning July 1, 2013, the balance of a school district's flexibility fund may not exceed 150% of the school district's maximum general fund budget.

Section 23. Appropriation. (1) There is appropriated $1 million for fiscal year 2013 from the general fund to the superintendent of public instruction. The purpose of the appropriation is to contribute to interlocal cooperative funds provided for in 20-3-363 to be paid to districts participating in multidistrict cooperatives. The superintendent shall pay to participating districts an amount in proportion to the size of the district's BASE budget compared to the sum of the BASE budgets of participating districts in all multidistrict cooperatives.

(2) By December 31, 2012, the prime applicant of a multidistrict cooperative shall report to the office of public instruction the name of each participating district along with a copy of the finalized agreement pursuant to 20-3-363. The office of public instruction shall pay the district's proportionate share no later than February 1, 2013.

Section 24. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 25. Codification instruction. [Sections 3, 4, 8 through 10, and 22] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 3, 4, 8 through 10, and 22].

Section 26. Coordination instruction. If House Bill No. 316 is not passed and approved in a form that reallocates at least 10% of the metalliferous mines license tax allocations in 15-37-117(1)(a), (1)(b), (1)(d), and (1)(e) to the state general fund and at least 10% of the lodging and facility use tax allocations in 15-65-121(1)(a) through (1)(e) to the state general fund, then [section 15 of this act], amending 20-9-306, is void and 20-9-306 is amended as follows:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment; and

(f) the total American Indian achievement gap payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, and 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) for each high school district:

(i) ~~$246,085~~ *$256,003* for fiscal year ~~2010~~ *2012*; and

(ii) ~~$253,468~~ *$260,099* for each succeeding fiscal year;

(b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) ~~$22,141~~ *$23,033* for fiscal year ~~2010~~ *2012*;

(ii) ~~$22,805~~ *$23,402* for each succeeding fiscal year; and

(c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:

(i) for kindergarten through grade 6 elementary program:

(A) ~~$22,141~~ *$23,033* for fiscal year ~~2010~~ *2012*; and

(B) ~~$22,805~~ *$23,402* for each succeeding fiscal year; plus

(ii) for an approved and accredited junior high school program, 7th and 8th grade program, or middle school:

(A) ~~$62,704~~ *$65,231* for fiscal year ~~2010~~ *2012*; and

(B) ~~$64,585~~ *$66,275* for each succeeding fiscal year.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying $200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total Indian education for all payment" means the payment resulting from multiplying $20.40 times the ANB of the district or $100 for each district, whichever is greater, as provided for in 20-9-329.

(14) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$6,097~~ *$6,343* for fiscal year ~~2010~~ *2012* and ~~$6,280~~ *$6,444* for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of ~~$4,763~~ *$4,955* for fiscal year ~~2010~~ *2012* and ~~$4,906~~ *$5,034* for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of ~~$4,763~~ *$4,955* for fiscal year ~~2010~~ *2012* and ~~$4,906~~ *$5,034* for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$6,097~~ *$6,343* for fiscal year ~~2010~~ *2012* and ~~$6,280~~ *$6,444* for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(15) "Total quality educator payment" means the payment resulting from multiplying $3,036 for fiscal year 2008 and $3,042 for each succeeding fiscal year times the number of full-time equivalent educators as provided in 20-9-327."

Section 27. Coordination instruction. If [this act] is passed and approved, the general fund appropriation for BASE aid in House Bill No. 2 is increased by $3,419,812.

Section 28. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective on passage and approval and applies to school fiscal year 2012.

(2) [Sections 9 and 10] are effective July 1, 2013.

Section 29. Termination. [Sections 1, 7, and 8] terminate June 30, 2016.

Approved May 13, 2011

CHAPTER NO. 419

[SB 423]

AN ACT ESTABLISHING THE MONTANA MARIJUANA ACT AND REVISING LAWS RELATING TO THE USE OF MARIJUANA; CREATING A REGISTRY PROGRAM FOR THE CULTIVATION, MANUFACTURE, TRANSPORTATION, AND TRANSFER OF MARIJUANA BY CERTAIN INDIVIDUALS; REQUIRING REPORTING; ALLOWING INSPECTIONS; REQUIRING LEGISLATIVE MONITORING; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING A TRANSITION PROCESS; AMENDING SECTIONS 37-1-316, 37-3-343, 37-3-347, 41-5-216, 45-9-203, 46-18-202, 50-46-201, 50-46-202, AND 61-11-101, MCA; REPEALING SECTIONS 50-46-101, 50-46-102, 50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-206, 50-46-207, AND 50-46-210, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title — purpose. (1) [Sections 1 through 23] may be cited as the "Montana Marijuana Act".

(2) The purpose of [sections 1 through 23] is to:

(a) provide legal protections to persons with debilitating medical conditions who engage in the use of marijuana to alleviate the symptoms of the debilitating medical condition;

(b) allow for the limited cultivation, manufacture, delivery, and possession of marijuana as permitted by [sections 1 through 23] by persons who obtain registry identification cards;

(c) allow individuals to assist a limited number of registered cardholders with the cultivation and manufacture of marijuana or marijuana-infused products;

(d) establish reporting requirements for production of marijuana and marijuana-infused products and inspection requirements for premises; and

(e) give local governments a role in establishing standards for the cultivation, manufacture, and use of marijuana that protect the public health, safety, and welfare of residents within their jurisdictions.

Section 2. Definitions. As used in [sections 1 through 23], the following definitions apply:

(1) "Correctional facility or program" means a facility or program that is described in 53-1-202 and to which a person may be ordered by any court of competent jurisdiction.

(2) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician and by:

(i) objective proof of the etiology of the pain, including relevant and necessary diagnostic tests that may include but are not limited to the results of an x-ray, computerized tomography scan, or magnetic resonance imaging; or

(ii) confirmation of that diagnosis from a second physician who is independent of the treating physician and who conducts a physical examination;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) any other medical condition or treatment for a medical condition approved by the legislature.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Local government" means a county, a consolidated government, or an incorporated city or town.

(5) "Marijuana" has the meaning provided in 50-32-101.

(6) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by a registered cardholder by a means other than smoking.

(b) The term includes but is not limited to edible products, ointments, and tinctures.

(7) (a) "Marijuana-infused products provider" means a Montana resident who meets the requirements of [sections 1 through 23] and who has applied for and received a registry identification card to manufacture and provide marijuana-infused products for a registered cardholder.

(b) The term does not include the cardholder's treating or referral physician.

(8) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

(9) "Paraphernalia" has the meaning provided in 45-10-101.

(10) (a) "Provider" means a Montana resident 18 years of age or older who is authorized by the department to assist a registered cardholder as allowed under [sections 1 through 23].

(b) The term does not include the cardholder's treating physician or referral physician.

(11) "Referral physician" means a person who:

(a) is licensed under Title 37, chapter 3;

(b) has an established office in Montana; and

(c) is the physician to whom a patient's treating physician has referred the patient for physical examination and medical assessment.

(12) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(13) "Registered premises" means the location at which a provider or marijuana-infused products provider has indicated the person will cultivate or manufacture marijuana for a registered cardholder.

(14) "Registry identification card" means a document issued by the department pursuant to [section 3] that identifies a person as a registered cardholder, provider, or marijuana-infused products provider.

(15) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of [sections 1 through 23] if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

(16) "Second degree of kinship by blood or marriage" means a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, stepdaughter, stepgrandparent, or stepgrandchild.

(17) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(18) "Standard of care" means, at a minimum, the following activities when undertaken by a patient's treating physician or referral physician if the treating physician or referral physician is providing written certification for a patient with a debilitating medical condition:

(a) obtaining the patient's medical history;

(b) performing a relevant and necessary physical examination;

(c) reviewing prior treatment and treatment response for the debilitating medical condition;

(d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating medical condition;

(e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;

(f) monitoring the response to treatment and possible adverse effects; and

(g) creating and maintaining patient records that remain with the physician.

(19) "Treating physician" means a person who:

(a) is licensed under Title 37, chapter 3;

(b) has an established office in Montana; and

(c) has a bona fide professional relationship with the person applying to be a registered cardholder.

(20) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any mixtures or preparations of the dried leaves and flowers that are appropriate for the use of marijuana by a person with a debilitating medical condition.

(b) The term does not include the seeds, stalks, and roots of the plant.

(21) "Written certification" means a statement signed by a treating physician or referral physician that meets the requirements of [section 7] and is provided in a manner that meets the standard of care.

Section 3. Department responsibilities — issuance of cards — confidentiality — reports. (1) (a) The department shall establish and

maintain a program for the issuance of registry identification cards to Montana residents who:

(i) have debilitating medical conditions and who submit applications meeting the requirements of [sections 1 through 23]; and

(ii) are named as providers or marijuana-infused products providers by persons who obtain registry identification cards for their debilitating medical conditions.

(b) Persons who obtain registry identification cards are authorized to cultivate, manufacture, possess, and transport marijuana as allowed by [sections 1 through 23].

(2) The department shall conduct criminal history background checks as required by [sections 4 and 5] before issuing a registry identification card for a person named as a provider or marijuana-infused products provider.

(3) Registry identification cards issued pursuant to [sections 1 through 23] must:

(a) be laminated and produced on a material capable of lasting for the duration of the time period for which the card is valid;

(b) state the name, address, and date of birth of the registered cardholder and of the cardholder's provider or marijuana-infused products provider, if any;

(c) state the date of issuance and the expiration date of the registry identification card;

(d) contain a unique identification number;

(e) easily identify whether the card is for a person with a debilitating medical condition, a provider, or a marijuana-infused products provider; and

(f) contain other information that the department may specify by rule.

(4) (a) The department shall review the information contained in an application or renewal submitted pursuant to [sections 1 through 23] and shall approve or deny an application or renewal within 30 days of receiving the application or renewal and all related application materials.

(b) The department shall issue a registry identification card within 5 days of approving an application or renewal.

(5) Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) (a) Registry identification cards expire 1 year after the date of issuance unless:

(i) a physician has provided a written certification stating that a card is valid for a shorter period of time; or

(ii) a registered cardholder changes providers or marijuana-infused products providers.

(b) A provider's or marijuana-infused products provider's registry identification card expires at the time the department issues a card to a new provider or new marijuana-infused products providers named by a registered cardholder.

(7) A registered cardholder shall notify the department of any change in the cardholder's name, address, physician, provider, or marijuana-infused products providers or change in the status of the cardholder's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(8) The department shall maintain a confidential list of persons to whom the department has issued registry identification cards. Except as provided in subsection (9), individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform the official duties of the department; and

(b) authorized employees of state or local government agencies, including law enforcement agencies, only as necessary to verify that an individual is a lawful possessor of a registry identification card.

(9) The department shall provide the names of providers and marijuana-infused products providers to the local law enforcement agency having jurisdiction in the area in which the providers or marijuana-infused products providers are located. The law enforcement agency and its employees are subject to the confidentiality requirements of [section 17].

(10) (a) The department shall provide the board of medical examiners with the name of any physician who provides written certification for 25 or more patients within a 12-month period. The board of medical examiners shall review the physician's practices in order to determine whether the practices meet the standard of care.

(b) The physician whose practices are under review shall pay the costs of the board's review activities.

(11) The department shall report biannually to the legislature the number of applications for registry identification cards, the number of registered cardholders approved, the nature of the debilitating medical conditions of the cardholders, the number of providers and marijuana-infused products providers approved, the number of registry identification cards revoked, the number of physicians providing written certification for registered cardholders, and the number of written certifications each physician has provided. The report may not provide any identifying information of cardholders, physicians, providers, or marijuana-infused products providers.

(12) The board of medical examiners shall report annually to the legislature on:

(a) the number and types of complaints the board has received involving physician practices in providing written certification for the use of marijuana, pursuant to 37-3-203; and

(b) the number of physicians whose names were provided to the board by the department as required under subsection (10). The report must include information on whether a physician whose practices were reviewed by the board pursuant to subsection (10) met the standard of care when providing written certifications.

Section 4. Persons with debilitating medical conditions — requirements — minors — limitations. (1) Except as provided in subsections (2) through (4), the department shall issue a registry identification card to a person with a debilitating medical condition who submits the following, in accordance with department rules:

(a) an application on a form prescribed by the department;

(b) an application fee or a renewal fee;

(c) the person's name, street address, and date of birth;

(d) proof of Montana residency;

(e) a statement that the person will be cultivating and manufacturing marijuana for the person's use or will be obtaining marijuana from a provider or a marijuana-infused products provider;

(f) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates, manufactures, or obtains for the person's debilitating medical condition;

(g) the name of the person's treating physician or referral physician and the street address and telephone number of the physician's office;

(h) the street address where the person is cultivating or manufacturing marijuana if the person is cultivating or manufacturing marijuana for the person's own use;

(i) the name, date of birth, and street address of the individual the person has selected as a provider or marijuana-infused products provider, if any; and

(j) the written certification and accompanying statements from the person's treating physician or referral physician as required pursuant to [section 7].

(2) The department shall issue a registry identification card to a minor if the materials required under subsection (1) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions:

(a) provides proof of legal guardianship and responsibility for health care decisions if the person is submitting an application as the minor's legal guardian with responsibility for health care decisions; and

(b) signs and submits a written statement that:

(i) the minor's treating physician or referral physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the use of marijuana; and

(ii) the minor's custodial parent or legal guardian with responsibility for health care decisions:

(A) consents to the use of marijuana by the minor;

(B) agrees to serve as the minor's marijuana-infused products provider;

(C) agrees to control the acquisition of marijuana and the dosage and frequency of the use of marijuana by the minor;

(D) agrees that the minor will use only marijuana-infused products and will not smoke marijuana;

(c) submits fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation. The parent or legal guardian shall pay the costs of the background check and may not obtain a registry identification card as a marijuana-infused products provider if the parent or legal guardian does not meet the requirements of [section 5].

(d) pledges, on a form prescribed by the department, not to divert to any person any marijuana cultivated or manufactured for the minor's use in a marijuana-infused product.

(3) An application for a registry identification card for a minor must be accompanied by the written certification and accompanying statements required pursuant to [section 7] from a second physician in addition to the minor's treating physician or referral physician.

(4) A person may not be a registered cardholder if the person is in the custody of or under the supervision of the department of corrections or a youth court.

(5) A registered cardholder who elects to obtain marijuana from a provider or marijuana-infused products provider may not cultivate or manufacture marijuana for the cardholder's use unless the registered cardholder is the provider or marijuana-infused products provider.

(6) A registered cardholder may cultivate or manufacture marijuana as allowed under [section 10] only:

(a) at a property that is owned by the cardholder; or

(b) with written permission of the landlord, at a property that is rented or leased by the cardholder.

(7) No portion of the property used for cultivation and manufacture of marijuana for use by the registered cardholder may be shared with or rented or leased to a provider, a marijuana-infused products provider, or a registered cardholder unless the property is owned, rented, or leased by cardholders who are related to each other by the second degree of kinship by blood or marriage.

Section 5. Provider types — requirements — limitations — activities. (1) The department shall issue a registry identification card to or renew a card for the person who is named as a provider or marijuana-infused products provider in a registered cardholder's approved application if the person submits to the department:

(a) the person's name, date of birth, and street address on a form prescribed by the department;

(b) proof that the person is a Montana resident;

(c) fingerprints to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation;

(d) a written agreement signed by the registered cardholder that indicates whether the person will act as the cardholder's provider or marijuana-infused products provider;

(e) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates or manufactures for a registered cardholder;

(f) a statement acknowledging that the person will cultivate and manufacture marijuana for the registered cardholder at only one location as provided in subsection (7). The location must be identified by street address.

(g) a fee as determined by the department to cover the costs of the fingerprint and background check and associated administrative costs of processing the registration.

(2) The department may not register a person under this section if the person:

(a) has a felony conviction or a conviction for a drug offense;

(b) is in the custody of or under the supervision of the department of corrections or a youth court;

(c) has been convicted of a violation under [section 16];

(d) has failed to:

(i) pay any taxes, interest, penalties, or judgments due to a government agency;

(ii) stay out of default on a government-issued student loan;

(iii) pay child support; or

(iv) remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency; or

(e) is a registered cardholder who has designated a provider or marijuana-infused products provider in the person's application for a card issued under [section 4].

(3) (a) (i) A provider or marijuana-infused products provider may assist a maximum of three registered cardholders.

(ii) A person who is registered as both a provider and a marijuana-infused products provider may assist no more than three registered cardholders.

(b) If the provider or marijuana-infused products provider is a registered cardholder, the provider or marijuana-infused products provider may assist a maximum of two registered cardholders other than the provider or marijuana-infused products provider.

(4) A provider or marijuana-infused products provider may accept reimbursement from a cardholder only for the provider's application or renewal fee for a registry identification card issued under this section.

(5) Marijuana for use pursuant to [sections 1 through 23] must be cultivated and manufactured in Montana.

(6) A provider or marijuana-infused products provider may not:

(a) accept anything of value, including monetary remuneration, for any services or products provided to a registered cardholder;

(b) buy or sell mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-infused products; or

(c) use marijuana unless the person is also a registered cardholder.

(7) (a) A person registered under this section may cultivate and manufacture marijuana for use by a registered cardholder only at one of the following locations:

(i) a property that is owned by the provider or marijuana-infused products provider;

(ii) with written permission of the landlord, a property that is rented or leased by the provider or marijuana-infused products provider; or

(iii) a property owned, leased, or rented by the registered cardholder pursuant to the provisions of [section 4].

(b) No portion of the property used for cultivation and manufacture of marijuana may be shared with or rented or leased to another provider or marijuana-infused products provider or another registered cardholder.

Section 6. Marijuana-infused products provider — requirements — allowable activities. (1) An individual registered as a marijuana-infused products provider shall:

(a) prepare marijuana-infused products at a premises registered with the department that is used for the manufacture and preparation of marijuana-infused products; and

(b) use equipment that is used exclusively for the manufacture and preparation of marijuana-infused products.

(2) A marijuana-infused products provider:

(a) may cultivate marijuana only for the purpose of making marijuana-infused products; and

(b) may not provide a cardholder with marijuana in a form that may be used for smoking unless the marijuana-infused products provider is also a registered provider and is providing the marijuana to a registered cardholder who has selected the person as the person's registered provider.

(3) All registered premises on which marijuana-infused products are manufactured must meet any applicable standards set by a local board of health for a food service establishment as defined in 50-50-102.

(4) Marijuana-infused products may not be considered a food or drug for the purposes of Title 50, chapter 31.

Section 7. Written certification — accompanying statements. (1) The written certification provided by a physician must be made on a form prescribed by the department and signed and dated by the physician. The written certification must:

(a) include the physician's name, license number, and office address and telephone number on file with the board of medical examiners and the physician's business e-mail address, if any; and

(b) the name, date of birth, and debilitating medical condition of the person for whom the physician is providing written certification.

(2) A treating physician or referral physician who is providing written certification for a patient shall provide a statement initialed by the physician that must:

(a) confirm that the physician is:

(i) the person's treating physician and that the person has been under the physician's ongoing medical care as part of a bona fide professional relationship with the person; or

(ii) the person's referral physician;

(b) confirm that the person suffers from a debilitating medical condition;

(c) describe the debilitating medical condition, why the condition is debilitating, and the extent to which it is debilitating;

(d) confirm that the physician has assumed primary responsibility for providing management and routine care of the person's debilitating medical condition after obtaining a comprehensive medical history and conducting a physical examination that included a personal review of any medical records maintained by other physicians and that may have included the person's reaction and response to conventional medical therapies;

(e) describe the medications, procedures, and other medical options used to treat the condition;

(f) state that the medications, procedures, or other medical options have not been effective;

(g) confirm that the physician has reviewed all prescription and nonprescription medications and supplements used by the person and has considered the potential drug interaction with marijuana;

(h) state that the physician has a reasonable degree of certainty that the person's debilitating medical condition would be alleviated by the use of marijuana and that, as a result, the patient would be likely to benefit from the use of marijuana;

(i) confirm that the physician has explained the potential risks and benefits of the use of marijuana to the person;

(j) list restrictions on the person's activities due to the use of marijuana;

(k) specify the time period for which the use of marijuana would be appropriate, up to a maximum of 1 year;

(l) state that the physician will:

(i) continue to serve as the person's treating physician or referral physician; and

(ii) monitor the person's response to the use of marijuana and evaluate the efficacy of the treatment; and

(m) contain an attestation that the information provided in the written certification and accompanying statements is true and correct.

(3) A physician who is the second physician recommending marijuana for use by a minor shall submit:

(a) a statement initialed by the physician that the physician conducted a comprehensive review of the minor's medical records as maintained by the treating physician or referral physician;

(b) a statement that in the physician's professional opinion, the potential benefits of the use of marijuana would likely outweigh the health risks for the minor; and

(c) an attestation that the information provided in the written certification and accompanying statements is true and correct.

(4) If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification.

Section 8. Registry card to be carried and exhibited on demand — photo identification required. A registered cardholder, provider, or marijuana-infused products provider shall keep the person's registry identification card in the person's immediate possession at all times. The person shall display the registry identification card and a valid photo identification upon demand of a law enforcement officer, justice of the peace, or city or municipal judge.

Section 9. Health care facility procedures for patients with marijuana for use. (1) (a) Except for hospices and residential care facilities that allow the use of marijuana as provided in [section 11], a health care facility as defined in 50-5-101 shall take the following measures when a patient who is a registered cardholder has marijuana in the patient's possession upon admission to the health care facility:

(i) require the patient to remove the marijuana from the premises before the patient is admitted if the patient is able to do so; or

(ii) make a reasonable effort to contact the patient's provider, marijuana-infused products provider, court-appointed guardian, or person with a power of attorney, if any.

(b) If a patient is unable to remove the marijuana or the health care facility is unable to contact an individual as provided in subsection (1)(a), the facility shall contact the local law enforcement agency having jurisdiction in the area where the facility is located.

(2) A provider, marijuana-infused products provider, court-appointed guardian, or person with a power of attorney, if any, contacted by a health care facility shall remove the marijuana and deliver it to the patient's residence.

(3) A law enforcement agency contacted by a health care facility shall respond by removing and destroying the marijuana.

(4) A health care facility may not be charged for costs related to removal of the marijuana from the facility's premises.

Section 10. Legal protections — allowable amounts. (1) (a) A registered cardholder may possess up to 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana.

(b) A provider or marijuana-infused products provider may possess 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana for each registered cardholder who has named the person as the registered cardholder's provider.

(2) Except as provided in [section 11] and subject to the provisions of subsection (7), an individual who possesses a registry identification card issued pursuant to [sections 1 through 23] may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

(a) the individual cultivates, manufactures, possesses, or transports marijuana in the amounts allowed under this section; or

(b) the registered cardholder acquires or uses marijuana.

(3) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, solely for providing written certification for a patient with a debilitating medical condition.

(4) Nothing in this section prevents the imposition of a civil penalty or a disciplinary action by a professional licensing board or the department of labor and industry if:

(a) a registered cardholder's use of marijuana impairs the cardholder's job-related performance; or

(b) a physician violates the standard of care or other requirements of [sections 1 through 23].

(5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity of the use of marijuana as permitted under [sections 1 through 23].

(b) This subsection (5) does not prevent the arrest or prosecution of an individual who is in the vicinity of a registered cardholder's use of marijuana if the individual is in possession of or is using marijuana and is not a registered cardholder.

(6) Except as provided in [section 14], possession of or application for a registry identification card does not alone constitute probable cause to search the individual or the property of the individual possessing or applying for the registry identification card or otherwise subject the individual or property of the individual possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(7) The provisions of this section relating to protection from arrest or prosecution do not apply to an individual unless the individual has obtained a registry identification card prior to an arrest or the filing of a criminal charge. It is not a defense to a criminal charge that an individual obtains a registry identification card after an arrest or the filing of a criminal charge.

(8) (a) A registered cardholder, a provider, or a marijuana-infused products provider is presumed to be engaged in the use of marijuana as allowed by [sections 1 through 23] if the person:

(i) is in possession of a valid registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under [sections 1 through 23].

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a registered cardholder's debilitating medical condition.

Section 11. Limitations of the act. (1) [Sections 1 through 23] do not permit:

(a) any person, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;

(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

(vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

(viii) at a public park, public beach, public recreation center, or youth center;

(ix) in or on the property of any church, synagogue, or other place of worship;

(x) in plain view of or in a place open to the general public; or

(xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate or manufacture marijuana for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in [sections 1 through 23] may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse a person for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a landlord to allow a tenant who is a registered cardholder, provider, or marijuana-infused products provider to cultivate or manufacture marijuana or to allow a registered cardholder to use marijuana.

(5) Nothing in [sections 1 through 23] may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in [sections 1 through 23] may be construed to allow a provider or marijuana-infused products provider to use marijuana or to prevent criminal prosecution of a provider or marijuana-infused products provider who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that a person with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the person to provide a sample of the person's blood for testing pursuant to the provisions of 61-8-405. A person with a tetrahydrocannabinol (THC) level of 5 ng/ml may be charged with a violation of 61-8-401.

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the person's registry identification card if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of 61-8-401, 61-8-406, or 61-8-410. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of 61-8-401 or 61-8-406; or

(ii) in 61-8-410 for a violation of 61-8-410.

(c) If a person's registry identification card is subject to renewal during the revocation period, the person may not renew the card until the full revocation period has elapsed. The card may be renewed only if the person submits all materials required for renewal.

Section 12. Prohibitions on physician affiliation with providers and marijuana-infused products providers — sanctions. (1) (a) A physician who provides written certifications may not:

(i) accept or solicit anything of value, including monetary remuneration, from a provider or marijuana-infused products provider;

(ii) offer a discount or any other thing of value to a person who uses or agrees to use a particular provider or marijuana-infused products provider; or

(iii) examine a patient for the purposes of diagnosing a debilitating medical condition at a location where medical marijuana is cultivated or manufactured or where marijuana-infused products are made.

(b) Subsection (1)(a) does not prevent a physician from accepting a fee for providing medical care to a provider or marijuana-infused products provider if the physician charges the person the same fee that the physician charges other patients for providing a similar level of medical care.

(2) If the department has cause to believe that a physician has violated this section, has violated a provision of rules adopted pursuant to this chapter, or has not met the standard of care required under this chapter, the department may refer the matter to the board of medical examiners provided for in 2-15-1731 for review pursuant to 37-1-308.

(3) A violation of this section constitutes unprofessional conduct under 37-1-316. If the board of medical examiners finds that a physician has violated this section, the board shall restrict the physician's authority to provide written certification for the use of marijuana. The board of medical examiners shall notify the department of the sanction.

(4) If the board of medical examiners believes a physician's practices may harm the public health, safety, or welfare, the board may summarily restrict a physician's authority to provide written certification for the medical use of marijuana.

Section 13. Local government authority to regulate. (1) To protect the public health, safety, or welfare, a local government may by ordinance or resolution regulate a provider or marijuana-infused products provider that operates within the local government's jurisdictional area. The regulations may include but are not limited to inspections of locations where marijuana is cultivated or manufactured in order to ensure compliance with any public health, safety, and welfare requirements established by the department or the local government.

(2) A local government may adopt an ordinance or resolution prohibiting providers and marijuana-infused products providers from operating as storefront businesses.

Section 14. Inspection procedures. (1) The department and state or local law enforcement agencies may conduct unannounced inspections of registered premises.

(2) (a) Each provider and marijuana-infused products provider shall keep a complete set of records necessary to show all transactions with registered cardholders. The records must be open for inspection by the department and state or local law enforcement agencies during normal business hours.

(b) The department may require a provider or marijuana-infused products provider to furnish information that the department considers necessary for the proper administration of [sections 1 through 23].

(3) (a) A registered premises, including any places of storage, where marijuana is cultivated, manufactured, or stored is subject to entry by the department or state or local law enforcement agencies for the purpose of inspection or investigation during normal business hours.

(b) If any part of the registered premises consists of a locked area, the provider or marijuana-infused products provider shall make the area available for inspection without delay upon request of the department or state or local law enforcement officials.

(4) A provider or marijuana-infused products provider shall maintain records showing the names and registry identification numbers of registered cardholders to whom mature plants, seedlings, usable marijuana, or marijuana-infused products were transferred and the quantities transferred to each cardholder.

Section 15. Unlawful conduct by cardholders — penalties. (1) The department shall revoke and may not reissue the registry identification card of a person who:

(a) is convicted of a drug offense;

(b) allows another person to be in possession of the person's:

(i) registry identification card; or

(ii) mature marijuana plants, seedlings, usable marijuana, or marijuana-infused products; or

(c) fails to cooperate with the department concerning an investigation or inspection if the person is registered and cultivating or manufacturing marijuana.

(2) A registered cardholder, provider, or marijuana-infused products provider who violates [sections 1 through 23] is punishable by a fine not to exceed $500 or by imprisonment in a county jail for a term not to exceed 6 months, or both, unless otherwise provided in [sections 1 through 23] or unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45.

Section 16. Fraudulent representation — penalties. (1) In addition to any other penalties provided by law, a person who fraudulently represents to a law enforcement official that the person is a registered cardholder, provider, or marijuana-infused products provider is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

(2) A physician who purposely and knowingly misrepresents any information required under [section 7] is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

(3) A person convicted under this section may not be registered as a provider or marijuana-infused products provider under [section 5].

Section 17. Confidentiality of registry information — penalty. (1) Except as provided in 37-3-203, a person, including an employee or official of the department of public health and human services, commits the offense of disclosure of confidential information related to registry information if the person knowingly or purposely discloses confidential information in violation of [sections 1 through 23].

(2) A person convicted of a violation of this section shall be fined not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

Section 18. Law enforcement authority. Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a person with a registry identification card.

Section 19. Forfeiture. (1) Marijuana, paraphernalia relating to marijuana, or other property seized by a law enforcement official from a person claiming the protections of [sections 1 through 23] in connection with the cultivation, manufacture, possession, transportation, distribution, or use of marijuana must be returned to the person immediately upon a determination that the person is in compliance with the provisions of [sections 1 through 23].

(2) A law enforcement agency in possession of mature marijuana plants or seedlings seized as evidence is not responsible for the care and maintenance of the plants or seedlings.

Section 20. Advertising prohibited. Persons with valid registry identification cards may not advertise marijuana or marijuana-related products in any medium, including electronic media.

Section 21. Hotline. (1) The department shall create and maintain a hotline to receive reports of suspected abuse of the provisions of [sections 1 through 23].

(2) The department may:

(a) investigate reports of suspected abuse of the provisions of [sections 1 through 23]; or

(b) refer reports of suspected abuse to the law enforcement agency having jurisdiction in the area where the suspected abuse is occurring.

Section 22. Legislative monitoring. (1) The children, families, health, and human services interim committee shall provide oversight of the department's activities related to registering individuals pursuant to [sections 1 through 23] and of issues related to the cultivation, manufacture, and use of marijuana pursuant to [sections 1 through 23].

(2) The committee shall identify issues likely to require future legislative attention and develop legislation to present to the next regular session of the legislature.

Section 23. Rulemaking authority — fees. (1) The department shall adopt rules necessary for the implementation and administration of [sections 1 through 23]. The rules must include but are not limited to:

(a) the manner in which the department will consider applications for registry identification cards for providers and marijuana-infused products providers and for persons with debilitating medical conditions and renewal of registry identification cards;

(b) the acceptable forms of proof of Montana residency;

(c) the procedures for obtaining fingerprints for the fingerprint and background check required under [sections 4 and 5];

(d) other rules necessary to implement the purposes of [sections 1 through 23].

(2) The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering [sections 1 through 23].

Section 24. Section 37-1-316, MCA, is amended to read:

"37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this part:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(17) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards*;*

(19) the sole use of any electronic means, including teleconferencing, to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to [sections 1 through 23]."

Section 25. Section 37-3-343, MCA, is amended to read:

"37-3-343. Practice of telemedicine prohibited without license — scope of practice limitations — violations and penalty. (1) A physician may not practice telemedicine in this state without a telemedicine license issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349.

(2) A telemedicine license authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician's application for a telemedicine license pursuant to 37-3-345(2).

(3) A telemedicine license authorizes an out-of-state physician to practice only telemedicine. A telemedicine license does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) A telemedicine license may not be used by a physician as a means to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to [sections 1 through 23].

~~(4)~~*(5)* A physician who practices telemedicine in this state without a telemedicine license issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, in violation of the terms or conditions of that license, in violation of the scope of practice allowed by the license, or without a physician's license issued pursuant to 37-3-301, is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

Section 26. Section 37-3-347, MCA, is amended to read:

"37-3-347. Reasons for denial of license — alternative route to licensed practice. (1) The board may deny an application for a telemedicine license if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a license required by 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349 and the rules of the board;

(b) plans to use telemedicine as a means to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to [sections 1 through 23];

~~(b)~~*(c)* fails to pay a required fee;

~~(c)~~*(d)* does not possess the qualifications or character required by this chapter; or

~~(d)~~*(e)* has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine license provided in 37-3-345 may apply for a physician's license in order to practice medicine in Montana."

Section 27. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records — sharing and access to records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation

management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003.

(12) This section does not prohibit the office of court administrator, upon written request from the department of public health and human services, from confirming whether a person applying for a registry identification card pursuant to [section 4 or 5] is currently under youth court supervision."

Section 28. Section 45-9-203, MCA, is amended to read:

"45-9-203. Surrender of license. *(1)* If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

(2) If a person with a registry identification card issued pursuant to [section 4 or 5] is convicted of an offense under this chapter, the court shall:

(a) at the time of sentencing, require the person to surrender the registry identification card; and

(b) notify the department of public health and human services of the conviction in order for the department to carry out its duties under [section 15]."

Section 29. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) a requirement that the offender surrender any registry identification card issued under [section 3];

~~(f)~~*(g)* any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

(3) If a sentencing judge requires an offender to surrender a registry identification card issued under [section 3], the court shall return the card to the department of public health and human services and provide the department with information on the offender's sentence. The department shall revoke the card for the duration of the sentence and shall return the card if the offender successfully completes the terms of the sentence before the expiration date listed on the card."

Section 30. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana — legal protections — limits on amount — presumption of medical use. (1) A person who possesses a registry identification card issued ~~pursuant to 50-46-103~~ *before [the effective date of this section]* may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana for medical use.

(2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

(3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:

(i) is in possession of a registry identification card; and

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.

(5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department."

Section 31. Section 50-46-202, MCA, is amended to read:

"50-46-202. Disclosure of confidential information relating to medical use of marijuana — penalty. *(1) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure except to:*

(a) authorized employees of the department as necessary to perform official duties of the department; or

(b) state or local law enforcement agencies only as necessary to verify that a person is a lawful possessor of a registry identification card.

~~(1)~~*(2)* A person, including an employee or official of the department or other state or local government agency, commits the offense of disclosure of confidential information relating to medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of ~~50-46-103~~ *this section*.

~~(2)~~*(3)* A person convicted of disclosure of confidential information relating to medical use of marijuana shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 32. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days

after the conviction becomes final. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) A conviction becomes final for the purposes of this part upon the later of:

(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;

(b) forfeiture of bail that is not vacated; or

(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.

(5) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (5)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (5), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(6) (a) If a person who holds a valid registry identification card issued pursuant to [section 4 or 5] is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, or 61-8-410, the court in which the conviction occurs shall require the person to surrender the registry identification card.

(b) Within 5 days after the conviction becomes final, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."

Section 33. Emergency rulemaking. The department of public health and human services shall adopt emergency rules as provided in 2-4-303 to allow for issuance of registry identification cards in accordance with the provisions of [sections 1 through 23] beginning June 1, 2011.

Section 34. Repealer. The following sections of the Montana Code Annotated are repealed:

50-46-101. Short title.

50-46-102. Definitions.

50-46-103. Procedures — minors — confidentiality — report to legislature.

50-46-201. Medical use of marijuana — legal protections — limits on amount — presumption of medical use.

50-46-202. Disclosure of confidential information relating to medical use of marijuana — penalty.

50-46-205. Limitations of Medical Marijuana Act.

50-46-206. Affirmative defense.

50-46-207. Fraudulent representation of medical use of marijuana — penalty.

50-46-210. Rulemaking — fees.

Section 35. Transition. (1) Registry identification cards issued to persons with debilitating medical conditions prior to [the effective date of this section] are valid until the expiration date listed on the card.

(2) (a) The department of public health and human services may issue registry identification cards to persons with debilitating medical conditions and to the persons named as providers or marijuana-infused products providers beginning June 1, 2011, under emergency rules adopted pursuant to [section 33].

(b) Until October 1, 2011, the department may issue cards to persons applying as providers or marijuana-infused products providers before the department has obtained the results of the fingerprint and background check required under [sections 4 and 5].

(c) A person who obtains a registry identification card as a provider or marijuana-infused products provider before October 1, 2011, shall submit fingerprints as required by [sections 4 and 5] no later than October 1, 2011.

(3) (a) The department shall revoke the registry identification card issued to a provider or marijuana-infused products provider under subsection (2) if:

(i) the person fails to submit fingerprints by October 1, 2011; or

(ii) the results of a fingerprint and background check conducted after issuance of the card shows that the person is ineligible for the card.

(b) The department shall notify the provider or marijuana-infused products provider and the registered cardholder who named the provider or marijuana-infused products provider that the person may no longer assist the registered cardholder with the use of marijuana to alleviate the symptoms of the cardholder's debilitating medical condition.

(4) A person who obtained a registry identification card as a caregiver pursuant to 50-46-103 before [the effective date of this section] may not be in possession of mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-related products on July 1, 2011, if the person has not obtained a registry identification card pursuant to the provisions of [sections 1 through 23] as provided for in subsection (2). Before July 1, 2011, a caregiver who has not obtained a registry identification card pursuant to [sections 1 through 23] shall take any mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-related products still in the caregiver's possession to the law enforcement agency having jurisdiction in the caregiver's area. The law enforcement agency shall destroy the items.

Section 36. Codification instruction. [Sections 1 through 23] are intended to be codified as an integral part of Title 50, chapter 46, and the provisions of Title 50, chapter 46, apply to [sections 1 through 23].

Section 37. Coordination instruction. If both House Bill No. 175 and [this act] are passed and approved and [this act] repeals 50-46-101, 50-46-102, 50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-206, 50-46-207, and 50-46-210, then House Bill No. 175 is void.

Section 38. Instructions to code commissioner. (1) Wherever a reference to "medical use of marijuana" or "medical marijuana" appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change the reference to "use of marijuana for a debilitating medical condition".

(2) Wherever a reference to 50-46-102 appears in legislation enacted by the 2011 legislature, the reference must be replaced with a reference to [section 2 of Senate Bill No. 423], if appropriate.

(3) Wherever a reference to 50-46-205 appears in legislation enacted by the 2011 legislature, the reference must be replaced with a reference to [section 11 of Senate Bill No. 423].

Section 39. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 40. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2011.

(2) [Sections 20, 30, 31, 33, the repeal of 50-46-103 provided for in section 34, and sections 35 and 38], and this section are effective on passage and approval.

Approved May 13, 2011

RESOLUTIONS

Adopted by the

SIXTY-SECOND LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2011, through April 28, 2011

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

House Joint Resolutions

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND THE PRESIDENT TO APPROVE FEDERAL LEGISLATION THAT WOULD RESULT IN THE IMMEDIATE REMOVAL OF THE GRAY WOLF FROM THE ENDANGERED SPECIES LIST IN MONTANA.

WHEREAS, in 2002, the gray wolf population in Montana, Idaho, and Wyoming achieved the biological requirement of a minimum of 30 breeding pairs and at least 300 wolves in a metapopulation in the Northern Rocky Mountains, a threshold established by the United States Fish and Wildlife Service to conclude that the gray wolf is recovered and should be delisted; and

WHEREAS, the tristate wolf population has remained on the rise with an estimated 115 breeding pairs and 1,706 wolves total at the end of 2009, including an estimated minimum of 37 breeding pairs and 524 wolves in Montana; and

WHEREAS, the Montana Department of Fish, Wildlife, and Parks has maintained a federally approved wolf management plan for several years and has proven that the plan, including the use of a public hunt, will maintain a secure, viable population of gray wolves in Montana; and

WHEREAS, the United States Fish and Wildlife Service has delisted the gray wolf in Montana twice (on March 28, 2008, and on May 4, 2009), and despite proven, effective state management, the species has been relisted both times by court ruling; and

WHEREAS, the Montana Department of Fish, Wildlife, and Parks has joined with the United States Departments of Interior and Justice in defense of the delisting decision and to appeal the most recent court ruling relisting the gray wolf because state management of the species is the preferred alternative to federal management of state wildlife; and

WHEREAS, even if the appeal is successful and the gray wolf is delisted in Montana, certain organizations may continue to challenge the delisting and state management of the gray wolf; and

WHEREAS, the relisting of the gray wolf in Montana has stripped the state of its ability to most effectively manage gray wolves at a time when biological and social impacts of the species are exceeding carrying capacity; and

WHEREAS, any delay in the delisting of the gray wolf will exacerbate these negative biological and social impacts and erode the broad base of public support Montana has developed for its management of the gray wolf; and

WHEREAS, the 62nd Legislature believes that federal legislation is the most effective way to ensure that the gray wolf is removed from the endangered species list in Montana and to ensure that management of the species will remain with the state and the state agency best suited to successfully maintain a secure, viable gray wolf population in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 62nd Legislature:

(1) fully supports the transfer of management of the gray wolf to the state of Montana;

(2) defends the efforts of the Montana Department of Fish, Wildlife, and Parks and the United States Fish and Wildlife Service to remove the gray wolf from the federal and state endangered species lists;

(3) urges Congress to quickly pass federal legislation that will result in the immediate removal of the gray wolf from the endangered species list in Montana and ensure the ability of the state to continue its successful management of the species; and

(4) urges the President and the President's administration to fully support such legislation.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Montana Congressional Delegation, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the Secretary of the United States Department of the Interior, and the Director of the United States Fish and Wildlife Service.

Adopted March 19, 2011

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING THE DESIGNATION OF NATIONAL MONUMENTS IN MONTANA WITHOUT THE CONSENT OF THE MONTANA LEGISLATURE AND THE GOVERNOR.

WHEREAS, the Antiquities Act of 1906, 16 U.S.C. 431 through 433, authorizes the President of the United States to proclaim national monuments on federal lands without the consent of Congress or states and without regard to federal, state, and local land management policies; and

WHEREAS, a United States Bureau of Land Management (BLM) internal draft memorandum states that an area identified as "Montana's Northern Prairie", a 2.5-million-acre expanse bordering the Bitter Creek Wilderness Study Area in Northeastern Montana and Grasslands National Park in Canada, may be a good candidate "for National Monument designation under the Antiquities Act"; and

WHEREAS, the BLM internal memorandum states that this "cross-boundary conservation unit would provide an opportunity to restore prairie wildlife and the possibility of establishing a new national bison range"; and

WHEREAS, the BLM internal memorandum also states that this "landscape conservation opportunity would require conservation easements, willing seller acquisitions, and withdrawal from the public domain"; and

WHEREAS, the Montana grasslands referred to in the internal memorandum are currently managed by the BLM pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701, et seq., which directs the BLM to manage public lands in a manner consistent with resource management plans; and

WHEREAS, the BLM is currently developing and revising a resource management plan for the lands within the area referenced in the BLM internal draft memorandum; and

WHEREAS, BLM's revision process calls for broad input and participation consistent with existing state and local land management laws and policies; and

WHEREAS, the designation of a national monument in the areas referred to in the BLM's internal memorandum would undercut the integrity of the resource management plan development and revision process; and

WHEREAS, a presidential proclamation designating a national monument by the stroke of a pen without the state's consent and in derogation of local, state, and federal land management policies exceeds the bounds of legitimate presidential authority provided by the United States Constitution; and

WHEREAS, the Antiquities Act states, "The President ... may reserve as a part [of a national monument] parcels of land, the limits of which in all cases shall be confined to the smallest areas compatible with the proper care and management of the objects to be protected"; and

WHEREAS, the lands referenced in the BLM's internal memorandum exceed 2 million acres and do not meet the "smallest areas compatible" requirement as set forth in the Antiquities Act; and

WHEREAS, the lives and livelihoods of Montanans in the area depend on multiple-use access to BLM-managed lands and will be adversely affected by a national monument designation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana expresses its opposition to the presidential designation of any new national monument in Montana, including a national monument referred to by the BLM as "Montana's Northern Prairie", without the consent of the Legislature and the Governor.

BE IT FURTHER RESOLVED, that the Legislature urges Congress to amend the Antiquities Act to require land reserved as part of a national monument to be confined to small discrete monuments or memorials and to preclude the presidential designation of a national monument from taking effect without the consent of Congress.

BE IT FURTHER RESOLVED, that the Legislature urges the federal government to manage federal public lands in Montana according to state and local resource management plans and policies and with public input as required by FLPMA.

BE IT FURTHER RESOLVED, that the Legislature strongly opposes any presidential action that would unnecessarily restrict public access to or use of federal lands.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the members of Montana's Congressional Delegation, and the Governor of the State of Montana.

Adopted March 5, 2011

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CREATING MONTANANS WITH DEVELOPMENTAL DISABILITIES WEEK.

WHEREAS, in order to ensure the full inclusion of people with developmental disabilities into society, it is necessary to expand the public's knowledge, awareness, and understanding of developmental disabilities; and

WHEREAS, some Montanans have a variety of developmental disabilities, and every human life has value; and

WHEREAS, promoting a greater understanding between those with and without developmental disabilities will lead to increased opportunities for interaction between people with and without developmental disabilities and will promote a common awareness and understanding of current developmental disability issues; and

WHEREAS, many Montanans with developmental disabilities contribute much to society; and

WHEREAS, Montana has benefited from art and entertainment produced by Montanans with developmental disabilities; and

WHEREAS, Montanans with developmental disabilities live productive lives in a respectful and dignified way; and

WHEREAS, many Montana businesses benefit from the abilities of Montanans with developmental disabilities; and

WHEREAS, a greater awareness of the needs of those with developmental disabilities can help promote an understanding of the importance of providing opportunities to people with developmental disabilities to develop and apply independent living skills that are critical to personal success in society.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature designate the second week of May as Montanans With Developmental Disabilities Week.

BE IT FURTHER RESOLVED, that the Legislature declares that the observance of an annual Montanans With Developmental Disabilities Week is timely and necessary, and encourages all people, school districts, community colleges, cities and counties, public and private institutions of higher education, state and local agencies, nonprofit and community-based organizations, and private businesses and corporations to observe Montanans With Developmental Disabilities Week by declaring appropriate classroom instructional time or by coordinating all inclusive activities to be conducted during that week to afford opportunities for Montana citizens to learn more about the developmental disability community and to celebrate and honor its role in contemporary American society.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Speaker of the Montana House of Representatives, the President of the Montana Senate, the Superintendent of Public Instruction, the President of the Board of Regents of Higher Education, the president of each public or private university, college, or community college in Montana, the Director of the Department of Public Health and Human Services, the Director of the Montana Statewide Independent Living Council, and the Director of the Montana Council on Developmental Disabilities.

Adopted March 5, 2011

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING FOREST PRODUCTS INDUSTRY WEEK.

WHEREAS, the Montana forest products industry provides for the production of locally made wood products from Montana forests; and

WHEREAS, the Montana forest products industry provides for the stewardship of both private and public Montana forests; and

WHEREAS, the Montana forest products industry provides for the gainful employment of many of Montana's citizens; and

WHEREAS, the Montana forest products industry provides for the maintenance of access to both public and private forests for the enjoyment of the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature designates the 7-day period beginning on the third Sunday of October in each year as Montana Forest Products Industry Week.

BE IT FURTHER RESOLVED, that the Legislature declares that the observance of an annual Montana Forest Products Industry Week is timely and necessary and encourages the Governor, all people, school districts, community colleges, cities and counties, public and private institutions of higher education, state and local agencies, nonprofit and community-based organizations, and private businesses and corporations to observe Montana Forest Products Industry Week by issuing proclamations and honoring the forest products industry with appropriate ceremonies and activities.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Speaker of the Montana House of Representatives, the President of the Montana Senate, the Superintendent of Public Instruction, the President of the Board of Regents of Higher Education, the president of each public or private university, college, or community college in Montana, the Director of the Department of Natural Resources and Conservation, and the Director of the Department of Commerce.

Adopted March 11, 2011

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE STUDY CHILDHOOD HUNGER IN MONTANA AND WAYS TO IMPROVE ACCESS TO NUTRITIOUS FOOD FOR ALL MONTANA CHILDREN.

WHEREAS, more than 92,000 Montana children experience hunger and lack access to nutritious foods at various times each week and month; and

WHEREAS, the Montana Food Bank Network has seen children's visits for emergency food increase from 113,768 children during a 6-month period in 2009 to 165,443 children during the same 6-month period in 2010; and

WHEREAS, U.S. census figures show that poverty in Montana has increased from 14.8% in 2008 to 15.1% in 2009; and

WHEREAS, a family of four at the federal poverty level earns $1,838 a month and typically spends most of that amount on rent, child care, utilities, transportation, and medical expenses, meaning many families have little or no money for food; and

WHEREAS, research shows that a chronic lack of good nutrition results in a significantly increased risk of obesity, health problems, and behavioral and social problems and in the potential for decreased academic achievement, including an inability to complete a high school education; and

WHEREAS, children with poor health and academic outcomes during their school years have a lower chance of achieving good health and self-sufficiency as adults, creating greater potential for future dependency on public assistance programs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study the degree to which Montana children lack access to adequate nutritious food and to make recommendations on ways to alleviate childhood hunger and improve access to nutritious foods for children throughout Montana.

BE IT FURTHER RESOLVED, that the study examine and make recommendations on:

(1) existing state, federal, local, and private programs that seek to reduce childhood hunger and improve children's access to nutritious foods, including but not limited to programs based in child-care facilities and schools;

(2) closing gaps that exist in the services offered by existing programs and reducing the barriers that exist to providing services to children throughout the state;

(3) ways in which communities and community organizations, including faith-based groups, could work together to:

(a) identify gaps in services;

(b) create a central clearinghouse for program information;

(c) share their expertise in areas such as nutrition education for children, growing one's own food, and basic food preparation skills; and

(d) expand successful programs into new communities;

(4) ways to encourage the use of Montana farm products in schools and other facilities and programs in which children are the primary users;

(5) policy changes needed at the state or federal level to increase participation in and improve on existing programs, including a review of existing tax policies and changes to those policies that may alleviate childhood hunger;

(6) the strategic use of public funds in order to produce efficiencies and create a strong case for public and private investments, including ways the state, communities, and faith-based groups could most efficiently raise awareness about childhood hunger through coordinated communications campaigns that target specific audiences, identify specific needs, and promote concrete solutions; and

(7) ways to measure the progress that existing or proposed efforts are making toward the goal of ending childhood hunger.

BE IT FURTHER RESOLVED, that the committee request participation in the study by the Department of Public Health and Human Services, the Office of

Public Instruction, the Department of Agriculture, the Department of Labor and Industry, the Department of Commerce, local school districts, community programs offering food assistance to low-income children, tribal representatives, private organizations, faith-based groups, and other organizations as appropriate.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 20, 2011

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF MONTANA'S INDIVIDUAL INCOME TAX SYSTEM AND OPTIONS TO REVISE THE INDIVIDUAL INCOME TAX.

WHEREAS, the Montana individual income tax is the largest source of state general fund revenue; and

WHEREAS, Montana's individual income tax laws generally conform with the Internal Revenue Code of 1986, as amended; and

WHEREAS, the State of Montana has enacted a variety of state-specific deductions, exclusions, exemptions, credits, and other special tax provisions; and

WHEREAS, the enactment of deductions, exclusions, exemptions, credits, and other special tax provisions may not achieve their intended purpose and may increase the complexity of complying with the state's individual income tax laws and increase the costs of administering and enforcing the state's individual income tax laws; and

WHEREAS, simplifying Montana's individual income tax laws would further enhance taxpayer compliance with state income tax laws, reduce administrative and enforcement costs, improve predictability for Montana's taxpayers, and provide stability of revenue for the state general fund, and promote economic development; and

WHEREAS, the Revenue and Transportation Interim Committee has recently conducted limited studies of the state's individual income tax structure.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, to:

(1) review the provisions of Montana's individual income tax laws, including but not limited to:

(a) general provisions;

(b) conformity with federal income tax law;

(c) provisions related to married filing jointly and married filing separately; and

(d) Montana-specific deductions, exclusions, exemptions, credits, and other special tax provisions;

(2) conduct an analysis that evaluates the individual income tax in terms of obligation or incidence; and

(3) conduct an analysis of Montana-specific deductions, exclusions, exemptions, credits, and other special tax provisions to determine:

(a) whether the deductions, exclusions, exemptions, credits, and other special income tax provisions are meeting their intended purpose;

(b) the costs of the deductions, exclusions, exemptions, credits, and special income tax provisions;

(4) analyze compliance and administrative costs associated with the state individual income tax, including but not limited to:

(a) taxpayer compliance costs; and

(b) auditing and enforcement costs;

(5) assess the complexity of the state's individual income tax structure;

(6) consider options to simplify the state's individual income tax structure, including but not limited to options related to:

(a) conformity with federal income tax laws;

(b) the individual income tax base;

(c) the reduction or elimination of deductions, exclusions, exemptions, credits, and other special tax provisions;

(d) revising Montana's individual income tax rate structure;

(e) the filing provisions for married taxpayers;

(7) evaluate the advantages and disadvantages of revising the state's individual income tax structure according to the criteria described in subsection (2).

BE IT FURTHER RESOLVED, that the study rely on, to the extent feasible, information presented to the Revenue and Transportation Interim Committee related to the House Joint Resolution No. 61 study of the conformity of Montana's income tax laws with federal income tax laws, passed by the 60th Legislature, and the Senate Joint Resolution No. 37 study of filing options for married taxpayers under Montana's individual income tax law, passed by the 61st Legislature.

BE IT FURTHER RESOLVED, that the study consider the knowledge and advice of:

(1) certified public accountants;

(2) tax attorneys;

(3) taxpayer groups;

(4) individual income taxpayers;

(5) the department of revenue;

(6) other persons with knowledge of state and federal income tax laws; and

(7) tax policy experts, business, industry, and agriculture groups, and economic development organizations for replacing the individual income tax with another revenue source or sources.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded before September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING SUPPORT FOR EXTENDED HOURS AT THE MORGAN-MONCHY PORT OF ENTRY.

WHEREAS, improving border services to increase industry competitiveness is important for continued growth of the Montana economy; and

WHEREAS, a recent analysis identified limited border services as a potential barrier to growth; and

WHEREAS, increasing access to key transportation trade corridors is important for improving industry competitiveness; and

WHEREAS, the Morgan-Monchy port of entry is only open from 9 a.m. to 6 p.m. from September 16 to May 31 and from 8 a.m. to 9 p.m. from June 1 to September 15.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 62nd Legislature urge the United States Congress to support extended hours at the Morgan-Monchy port of entry on the Montana and Saskatchewan border; and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to Montana's Congressional Delegation.

Adopted March 21, 2011

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE MILITARY SERVICE OF MONTANANS IN THE ARMED FORCES OF THE UNITED STATES.

WHEREAS, all Americans have the right, by virtue of wearing the noble title of citizen, to great personal freedoms in the pursuit of life, liberty, and happiness; and

WHEREAS, the history of our young country demonstrates countless examples of bravery and personal sacrifice in order to preserve the freedoms and liberties of the collective citizenry; and

WHEREAS, since September 11, 2001, the nation has once again called upon those who have dedicated their lives to the defense of the nation to stand up against forces that wish ill upon the United States; and

WHEREAS, Montanans have always answered the call to defend the nation, and Montanans will continue to serve and lead in the global war on terror; and

WHEREAS, Montanans serving in every branch of service, both on active duty and in the National Guard and Reserves, have been deployed in the global war on terror at great personal sacrifice to themselves and their families; and

WHEREAS, a number of Montanans have made the ultimate sacrifice in Operation Enduring Freedom and Operation Iraqi Freedom; and

WHEREAS, we as Montanans will continue to support these heroes as they return home to face the challenge of rejoining family, friends, and community.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognize the dedication, professionalism, and bravery of all Montanans who have served and will serve in the armed forces of the United States as a part of the global war on terror.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the respective Secretaries of the United States Army, Navy, and Air Force, the Commandant of the United States Marine Corps, the Commandant of the United States Coast Guard, and the Adjutant General of the Montana National Guard.

BE IT FURTHER RESOLVED, that the Secretary of State, in coordination with the Montana Department of Military Affairs, be encouraged to promote this resolution by encouraging the family members and friends of Montana's active duty military service members to contact the Department with the names and mailing addresses of the service members so that the Department may send a copy of this resolution to each Montana service member.

BE IT FURTHER RESOLVED, that the purpose and intent of this resolution is to convey to Montana service personnel that the heartfelt thanks of all Montanans are extended to them, that we are proud of them, that they are in our prayers, and that we send them best wishes for a safe return.

Adopted March 25, 2011

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF WAYS TO IMPROVE THE MANAGEMENT, RECOGNITION, AND COORDINATION OF STATE PARKS AND OUTDOOR RECREATION AND HERITAGE RESOURCE PROGRAMS OPERATED BY THE STATE OF MONTANA.

WHEREAS, state parks, outdoor recreation, and heritage resources are vitally important to families, communities, and the tourism economy of Montana; and

WHEREAS, Montana is blessed with some of the greatest resources in the United States; and

WHEREAS, 20 years of studies and reports identifying the need to improve the management, image, and organization of Montana's state parks have resulted in limited success; and

WHEREAS, well-managed boating, snowmobiling, and off-highway vehicle programs are important to Montana citizens as a form of thrift and in supporting a healthy tourism economy; and

WHEREAS, Montana state parks have magnificent natural, cultural, and recreational resources that require management for multiple uses; and

WHEREAS, the mission and management objectives for state parks may differ from many other programs administered by the Department of Fish, Wildlife, and Parks and need to be raised in priority and focus; and

WHEREAS, use of state parks by Montana residents has increased 78% since 2002; and

WHEREAS, demands for services at those parks and conservation of park resources need to be balanced; and

WHEREAS, hunting and fishing license dollars cannot be used to operate park and recreation programs; and

WHEREAS, cities and counties also work to provide for and coordinate strong outdoor recreation programs to maintain healthy communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) review audits and studies related to the management, support, and funding of state parks and outdoor recreational and heritage resource programs;

(2) evaluate the priority, organizational structure, and management of Department of Fish, Wildlife, and Parks programs related to state parks, boating, off-highway vehicles, and snowmobiling;

(3) evaluate the relationship between state, city, county, and federal park and recreation programs and provide recommendations for improving statewide coordination and communication between these programs;

(4) identify methods to improve the management of state parks and recreational and heritage resources for Montana citizens while supporting local communities and their economic health;

(5) compile and review information on other state park and recreational systems in the Rocky Mountain region, including their organizational structure, management, and governance;

(6) recommend changes to improve the balance, effectiveness, and priority of parks, recreation, and heritage resource stewardship in Montana; and

(7) propose legislation for consideration by the 63rd Legislature that:

(a) raises the awareness, professionalism, and priority of state parks and recreational programs in Montana; and

(b) establishes a state parks and recreation board that fosters additional citizen involvement and oversight of these programs.

BE IT FURTHER RESOLVED, that if the study results in a recommendation that the administration of state parks be moved out of the Department of Fish, Wildlife, and Parks, it be done with the intent to consolidate and improve the effectiveness of state park and recreation program management.

BE IT FURTHER RESOLVED, that the study involve the participation of recreation user groups, local, state, federal, and tribal stakeholders, including city officials, county commissioners, national park service representatives, heritage resource professionals, and other stakeholders interested in state park and recreation program management.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON THE IMPLICATIONS, OPTIONS, AND REPERCUSSIONS OF A HEALTH INSURANCE EXCHANGE IN THE STATE OF MONTANA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 63RD LEGISLATURE.

WHEREAS, Public Law 111-148 and Public Law 111-152 provide that a state has the option of establishing a health insurance exchange or allowing the Secretary of the U.S. Department of Health and Human Services to decide on or before January 1, 2013, whether to establish an exchange for any state that will not have an operational exchange by January 1, 2014; and

WHEREAS, the 62nd Legislature has through numerous votes indicated its concerns about many aspects of Public Law 111-148 and Public Law 111-152; and

WHEREAS, the wide-ranging implications of Public Law 111-148 and Public Law 111-152 for health insurance in the State of Montana, the health insurance industry, and the health care industry in this state suggest that the state has a duty to investigate approaches to developing a state exchange for Montanans, participating in a regional exchange, or leaving the decision of a health insurance exchange to federal authorities; and

WHEREAS, the State of Montana itself currently provides health insurance for its employees and may save money by allowing those state employees to purchase their insurance on a health insurance exchange.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct staff resources for a joint committee to review:

(a) the feasibility of creating a state-based health insurance exchange or participating in a regional health insurance exchange, including:

(i) options being considered in other states regarding developing and operating health insurance exchanges, as described in Public Law 111-148 and Public Law 111-152;

(ii) variations on how an exchange functions in the private marketplace for health insurance. As part of this study, the interim committee or joint committee shall consider whether a health insurance exchange reduces the marketing cost for health insurance and what measures may be needed to improve marketing efficiency if an exchange is developed in the state or regionally.

(iii) an evaluation of whether the exchange should offer a full scope of services or whether a more limited scope of services is appropriate;

(iv) an evaluation of whether an exchange can be used to facilitate the sale of health insurance across state lines and, if so, what changes in state law may be necessary;

(v) an evaluation of the efficiency, cost, and other considerations of including an application for a medicaid waiver to allow premium assistance inside the exchange;

(vi) an evaluation of whether an exchange should define levels of contributions and plan criteria;

(vii) an evaluation of the feasibility of premium aggregation for multiple employers of an employee; and

(viii) an evaluation of how an exchange will interact with insurance producers, including the effect on their compensation;

(b) the feasibility of discontinuing a health insurance benefit for state employees and legislators, including:

(i) what provisions may be necessary to neutralize the costs to state employees of various salary levels for participating in a health insurance exchange; and

(ii) what costs or savings might accrue to the state for discontinuing health insurance benefits for state employees and legislators.

(2) Based on the study, that the interim committee or joint committee make recommendations for legislation or a report to the 63rd Legislature regarding whether the state should proceed with the development of a state exchange or pursue participation in a regional exchange. If the recommendation is to proceed with development of a state exchange, the interim committee or joint committee shall provide draft legislation outlining a work plan and a timeline for implementation and future legislation, if needed. If the recommendation is to proceed with participation in a regional exchange, the interim committee or joint committee shall provide recommendations for changes in law or legislation necessary to implement a regional exchange.

(3) That the study include nonvoting stakeholder participants, including representatives of domestic insurance companies and health service corporations, small business, labor, the physician and health care provider community, the medical facility community, consumers, and insurance producers.

BE IT FURTHER RESOLVED, that the recommendations for legislation or a report must be prepared by staff of the Legislative Services Division and must include estimated fiscal impacts from the Legislative Fiscal Division.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 28, 2011

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF LOCAL FIRE PROTECTION AND EMERGENCY SERVICE ENTITIES AND FIREFIGHTER AND EMERGENCY MEDICAL TECHNICIAN BENEFITS.

WHEREAS, the Montana Legislature recognizes the invaluable public service provided by Montana's paid and volunteer firefighters and emergency medical technicians; and

WHEREAS, numerous bills have been introduced during the 62nd Legislature that would affect qualifications, duties, and benefits for paid and volunteer firefighters and emergency medical technicians; and

WHEREAS, legislation has also been introduced that would affect the powers and duties of fire departments, fire districts, fire service areas, and fire companies;

WHEREAS, the Department of Natural Resources and Conservation requires that counties provide workers' compensation insurance coverage for operators of firefighting apparatus provided to counties and assigned to fire agencies in the counties pursuant to agreements entered into as part of the State-County Cooperative Fire Protection Program; and

WHEREAS, many fire districts, fire service areas, and fire companies do not have the financial resources to comply with this requirement; and

WHEREAS, the powers, duties, and jurisdictions of local government fire agencies are varied and complex and warrant thorough analysis and understanding by the Legislature; and

WHEREAS, the House Local Government committee recognizes that a comprehensive review of local fire protection, emergency services, and firefighter and emergency medical technician benefits is necessary to identify problems and consider potential solutions for providing adequate, consistent, and coordinated local fire protection and emergency services and adequate, consistent, and coordinated benefits to paid and volunteer firefighters and emergency medical technicians who serve local governments and their citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim or statutory committee, pursuant to section 5-5-217, MCA, to conduct a comprehensive study of local fire protection and emergency services, how those services are paid for, and benefits provided to paid and volunteer firefighters and emergency medical technicians, including workers' compensation, disability, and retirement.

BE IT FURTHER RESOLVED, that the committee conducting the study:

(1) review the current structure and function of local fire protection agencies and emergency services, including municipal fire departments, rural fire districts, fire service areas, fire companies, and emergency medical technician services;

(2) examine how local governments pay for the various fire protection and emergency services in their jurisdictions;

(3) review the current benefits provided to paid and volunteer firefighters and emergency medical technicians by local governments and the financial capacity of the local governments to provide those benefits;

(4) review legislation introduced during the 62nd Legislature intended to modify local fire protection and emergency services and firefighter and emergency medical technician duties, qualifications, and benefits, the reasons for the legislation, and the outcome of the legislation;

(5) examine the Department of Natural Resources and Conservation's State-County Cooperative Fire Protection Program, the agreements entered into between the state and counties, and the coordination between the state and local governments for wildland fire protection;

(6) examine the services that local government firefighters and emergency medical technicians provide and how those services are reimbursed by citizens, insurance companies, and state and federal agencies;

(7) examine the viability, necessity, and jurisdiction of the various local government fire protection entities provided for in state statute; and

(8) determine whether modifications to statutes or state or local policies are warranted to achieve adequacy, consistency, and coordination in local government fire protection and emergency services and in the benefits provided to paid and volunteer firefighters and emergency medical technicians.

BE IT FURTHER RESOLVED, that the committee solicit participation and input from local governments, paid firefighters, volunteer firefighters, representatives of firefighter organizations, representatives of the Montana Public Employees' Retirement Administration, the Department of Natural Resources and Conservation, the Department of Labor and Industry, and any other entity that the committee considers to be appropriate.

BE IT FURTHER RESOLVED, that all aspects of the study be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, or recommendations, be reported to the 63rd Legislature.

Adopted April 27, 2011

HOUSE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF CERTAIN EXEMPTIONS FROM SUBDIVISION REVIEW.

WHEREAS, The Montana Subdivision and Platting Act provides for the local review of proposed subdivisions; and

WHEREAS, Title 76, chapter 3, part 2, governs circumstances under which divisions of land and certain types of conveyances and land uses are exempt from subdivision review; and

WHEREAS, provisions governing exemptions have been interpreted and applied differently by different local governments; and

WHEREAS, interpretation and application of the statutes governing exemptions have been the subject of litigation; and

WHEREAS, in August 2009, the Montana Attorney General was asked to provide an opinion to clarify the meaning of section 76-3-204, MCA, governing the exemption from subdivision review of the sale, rent, lease, or other conveyance of parts of a building, structure, or other improvement; and

WHEREAS, in March 2010, the Montana Attorney General issued a draft opinion, but a final opinion has yet to be issued; and

WHEREAS, bills introduced during the 62nd Legislature have sought to clarify the statutes governing exemptions for sale, rent, lease, or other conveyance; and

WHEREAS, the statutes governing subdivision exemptions are problematic in different regions of the state for different reasons, and statutory changes that would apply statewide to which all of the concerned parties can agree have proven to be difficult to develop.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, to:

(1) review the statutes governing exemptions from subdivision review provided in the Montana Subdivision and Platting Act, paying particular attention to the exemption for sale, rent, lease, or other conveyance and to subdivisions created by rent or lease;

(2) review the case law and opinions related to statutes governing exemptions;

(3) review the legislative history of the exemption statutes to determine their genesis and original intent;

(4) collect information on existing local subdivision regulations and how those regulations address exemptions; and

(5) develop findings, recommendations, and, if appropriate, legislation to clarify exemptions from subdivision review, considering the various conditions and needs that exist in different regions of the state.

BE IT FURTHER RESOLVED, that the committee conducting the study solicit participation and input from representatives of the development industry, planning organizations, environmental organizations, and local governments, as well as from citizens who have been impacted by local governments' application of statutes and regulations related to exemptions.

BE IT FURTHER RESOLVED, that all aspects of the study be concluded before September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings or recommendations by the committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

House Resolutions

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following House Rules be adopted:

RULES OF THE MONTANA HOUSE OF REPRESENTATIVES

CHAPTER 1

Administration

H10-10. House officers — definitions. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

(3) (a) "Majority leader" means the leader of the majority party, elected by the caucus as provided in 5-2-221.

(b) "Majority party" means the party with the most members, subject to subsection (4).

(c) "Minority leader" means the leader of the minority party, elected by the caucus as provided in 5-2-221.

(d) "Minority party" means the party with the second most members, subject to subsection (4).

(4) If there are an equal number of members of the two parties with the most members, then the majority party is the party of the Speaker and the minority party is the other party with an equal number of members.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(6) The Speaker is the chief officer of the House, with authority for all House employees.

(7) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

(8) Upon request of the Minority Leader, the Speaker will submit a request for a fiscal note on any bill.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has

the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

H10-50. Majority Leader. The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

(1) being the lead speaker for the majority party during floor debates;

(2) helping the Speaker develop the calendar;

(3) assisting the Speaker with program development, policy formation, and policy decisions; and

(4) presiding over the majority caucus meetings; and

(5) other duties as assigned by the caucus.

H10-60. Majority Whip. The duties of the majority whip may include but are not limited to:

(1) assisting the majority leader;

(2) ensuring member attendance;

(3) counting votes;

(4) generally communicating the majority position; and

(5) other duties as assigned by the caucus.

H10-70. Minority Leader. The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

(1) developing the minority position;

(2) negotiating with the majority party;

(3) directing minority caucus activities on the chamber floor;

(4) leading debate for the minority; and

(5) other duties as assigned by the caucus.

H10-80. Minority Whip. The major responsibilities for the minority whip may include but are not limited to:

(1) assisting the minority leader on the floor;

(2) counting votes;

(3) ensuring attendance of minority party members; and

(4) other duties as assigned by the caucus.

H10-90. Employees. (1) The Speaker shall appoint a Chief Clerk and Sergeant-at-Arms and may appoint a Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall employ necessary staff or delegate that function to the employees designated in subsection (1).

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority leaders may each appoint a private secretary.

H10-100. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

(1) supervise all House employees;

(2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and arrange to have them printed on archival paper and copied in an electronic format within a reasonable time after each meeting. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy will be delivered to the Montana Historical Society.

H10-110. Duties of Sergeant-at-Arms. The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-70;

(8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

H10-120. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-130. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-140. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-150. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-160. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier. (See Joint Rule 10-20.)

CHAPTER 2

Decorum

H20-10. Addressing the House — recognition. (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, "For what purpose does the member rise?" or "For what purpose does the member seek recognition?" and may then decide if recognition is to be granted. There is no appeal from the Speaker's or presiding officer's decision.

H20-20. Questions of order and privilege — appeal — restrictions. (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, "Shall the decision of the chairman be sustained?".

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

H20-30. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-40. Admittance to the House floor. (1) The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; registered media representatives; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

H20-50. Dilatory motions or questions — appeal. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-60. Lobbying by employees — sanctions. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker may discipline or discharge any House employee violating this prohibition. The Speaker may withdraw the privileges of any House aide or intern violating this prohibition.

H20-70. Papers distributed on desks — exception. A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution. This restriction does not apply to material prepared by staff and placed on a representative's desk at the request of the representative.

H20-80. Violation of rules — procedure — appeal. (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the majority or minority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

CHAPTER 3
Committees

H30-10. House standing committees — appointments — classification. (1) The Speaker shall determine the total number of members and after good faith consultation with the minority leader shall appoint the chairs, vice chairs, and members to the standing committees.

(2) The standing committees of the House are as follows:

(a) class one committees:

(i) Appropriations;

(ii) Business and Labor;

(iii) Judiciary;

(iv) State Administration; and

(v) Taxation;

(b) class two committees:

(i) Education;

(ii) federal Relations, Energy, and Telecommunications;

(iii) Human Services;

(iv) Natural Resources; and

(v) Transportation;

(c) class three committees:

(i) Agriculture;

(ii) Fish, Wildlife, and Parks; and

(iii) Local Government; and

(d) on call committees:

(i) Ethics;

(ii) Rules; and

(iii) Legislative Administration.

(3) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(4) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's recommendations must be submitted to the leadership nominated or elected at the presession caucus provided for in 5-2-201.

(5) There will be six subcommittees of the Committee on Appropriations, Education, General Government and Transportation, Health and Human Services, Natural Resources, Corrections, and Long-Range Planning. Each member serving on the Appropriations Committee must be appointed to at least one of the subcommittees.

(6) The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(7) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive

legislation in the same manner as a standing committee and are subject to the rules of standing committees.

H30-20. Chairman's duties. (1) The principal duties of the chairman of standing or select committees are to:

(a) preside over meetings of the committee and to put all questions;

(b) maintain order and decide all questions of order subject to appeal to the committee;

(c) supervise and direct staff of the committee;

(d) have the committee secretary keep the official record of the minutes;

(e) sign reports of the committee and submit them promptly to the Chief Clerk;

(f) appoint subcommittees to perform on a formal or an informal basis as provided in subsection (2); and

(g) inform the Speaker of committee activity.

(2) With the exception of the House Appropriations subcommittees, a subcommittee of a standing committee may be appointed by the chairman of the committee. The chairman of the standing committee shall appoint the chairman of the subcommittee.

H30-30. Quorum — officers as members. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, the majority leader, and the minority leader are ex officio, nonvoting members of all House committees. They may count toward establishing a quorum.

H30-40. Meetings — purpose — notice — minutes. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes;

(f) references to the recording log, sufficient to serve as an index to the original recording; and

(g) testimony and exhibits submitted in writing.

H30-50. Procedures — absentee or proxy voting — member privileges. (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent. The chairman shall attempt to not schedule Senate bills while the Senate is in session.

(3) The committee shall act on each bill in its possession:

(a) by reporting the bill out of the committee:

(i) with the recommendation that it be referred to another committee;

(ii) favorably as to passage; or

(iii) unfavorably; or

(b) by tabling the measure in committee.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar. A tie vote in a standing committee on the question of a recommendation to the whole House on a matter before the committee, for example on a question of whether a bill is recommended as "do pass" or "do not pass", does not result in the matter passing out to the whole House for consideration without recommendation.

(6) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the House that are formally adopted when the committee report is accepted by the House.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting. Standing and select committees may by a majority vote of the committee authorize members to vote by proxy if absent, while engaged in other legislative business or when excused by the presiding officer of the committee due to illness or an emergency. Authorization for absentee or proxy voting must be reflected in the committee minutes.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourths of all members of the committee to vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy if authorized pursuant to subsection (9), using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

H30-60. Public testimony — decorum — time restrictions. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshal. The chairman shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is allowed only at the discretion of the chairman.

CHAPTER 4
Legislation

H40-10. Introduction deadlines. If a representative accepts drafted legislation from the Legislative Services Division after the deadline for preintroduction, the representative may not introduce that legislation after 2 legislative days from the time the bill was accepted from the Legislative Services Division.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the legislation.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt — messages from Senate and elected officials. (1) During a session, proposed House legislation may be introduced in the House by submitting it, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. Except for the first 15 bill numbers that may be reserved for preintroduced legislation, in each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

H40-50. First reading — receipt of Senate legislation. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day — exception. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee, joint select committee, or joint special committee all properly introduced House legislation and transmitted Senate legislation in conformity to the committee jurisdiction.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee, joint select committee, or joint special committee.

H40-80. Rereferral — normal progression. (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

(3) The normal progress of legislation through the House consists of the following steps in the order listed: introduction; referral to a standing or select committee; a report from the committee; second reading; and third reading.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports — requirement for rejection of adverse committee report. (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas — vote requirements. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading — timing — obverse vote on failed motion — status of amendments — rejection of report — segregation. (1) Legislation returned or withdrawn from committee by motion must be placed on second reading prior to the transmittal deadlines provided for in Joint Rule 40-200 that are applicable to each piece of legislation.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate

legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise. Amendments adopted by the Committee of the Whole on segregated legislation remain adopted unless reconsidered pursuant to H50-170 or unless the legislation is rereferred to a committee.

H40-150. Amendments in the Committee of the Whole — timing — official records. (1) All Committee of the Whole amendments must be prepared by the Legislative Services Division and checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and sponsor agree, amendments must be printed and placed on the members' desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

H40-160. Motions in the Committee of the Whole — quorum required. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) recommend passage or nonpassage;

(b) recommend concurrence or nonconcurrence (Senate amendments to House legislation);

(c) amend;

(d) reconsider as provided in H50-170;

(e) pass consideration;

(f) call for cloture;

(g) change the order in which legislation is placed on the agenda; and

(h) rise, rise and report, or rise and report progress and beg leave to sit again.

(2) Subsections (1)(d) through (1)(f) and (1)(h) are nondebatable but may be amended. Once a motion under subsection (1)(a) or (1)(b) is made, a contrary motion is not in order.

(3) The motions listed in subsection (1) may be made in descending order as listed.

(4) If a quorum of representatives is not present during second reading, the Committee of the Whole may not conduct business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) Except as provided in H40-180, a representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill — sections — amendments. (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present the chairman's portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments. A proposed amendment to the general appropriations act may not be divided.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading, as amended, has been correctly engrossed, it must be placed on third reading on the following legislative day. If the bill is not amended, the bill must be sent to printing and must be placed on third reading on the legislative day after receipt. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day. For the purposes of this rule, "engrossing" means placing amendments in a bill. (See Joint Rule 40-150.)

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and joint resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation. (See Joint Rule 40-160.)

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5

Floor Actions

H50-10. Attendance — excuse — call of the House. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by the representative's party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may not conduct business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause during call of the House. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

H50-70. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

(4) The majority leader shall make routine procedural motions required to conduct the business of the House.

H50-80. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative

may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

H50-90. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn pursuant to H50-250;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to suspend the rules;

(j) all incidental motions, such as motions relating to voting or of a general procedural nature;

(k) to appeal a call to order;

(l) to question the lack of a quorum pursuant to H50-20; and

(m) to change a vote pursuant to H50-210.

H50-100. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

H50-110. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-120. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn (nondebatable H50-90 and H50-250);

(b) for a call of the House (nondebatable H50-90);

(c) to recess or rise (nondebatable H50-90);

(d) for a question of privilege;

(e) to table (nondebatable H50-90);

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee; and

(i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) (a) Except as provided in subsection (3)(b), no more than one substitute motion is in order at any one time.

(b) A motion for cloture is in order on a substitute motion to amend.

H50-130. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-140. Dividing a question. Except as provided in H40-180(3), a representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed. The request is nondebatable under H50-90. The presiding officer may rule that a question is nondivisible. The ruling of the chair may be appealed as provided in H50-160(15) or (17) and H70-50. For an appeal of a ruling of the presiding officer, the question for the house must be stated as, "Shall the ruling of the chair be upheld?".

H50-150. Previous question — close. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-160. Questions requiring other than a majority vote. The following questions require the vote specified for each condition:

100 House Members

(1) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt pursuant to Article VIII, section 8, of the Montana Constitution (two-thirds);

(5) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths);

(6) a motion to temporarily suspend a joint rule governing the procedure for handling bills pursuant to Joint Rule 60-10(2) (two-thirds).

Members Present and Voting

(1) a motion to override the Governor's veto pursuant to H40-260 and Article VI, section 10(3), of the Montana Constitution (two-thirds);

(2) a call of the House with a quorum pursuant to H50-40(1) (one-third);

(3) a motion to lift a call of the House pursuant to H50-30(3) or H50-40(4) (two-thirds);

(4) a motion to rerefer a bill from one committee to another pursuant to H40-80(1) (three-fifths);

(5) a motion to withdraw a bill from a committee pursuant to H40-90 (three-fifths);

(6) a motion to add legislation to the second or third reading agenda on that day pursuant to H40-130(2) (three-fifths);

(7) a motion to remove legislation from its normal progress through the House as provided under H40-80(3) and reassign it unless otherwise specifically provided by these rules, such as H40-80(2) (three-fifths);

(8) a motion to change a vote pursuant to H50-210 (unanimous);

(9) a motion to call for cloture pursuant to H40-170(2) (two-thirds);

(10) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds);

(11) a motion to amend rules pursuant to H70-10(2) or suspend rules pursuant to H70-30 (two-thirds);

(12) a motion to overturn an adverse committee report pursuant to H40-100(2) (three-fifths);

(13) a motion to record a vote pursuant to H50-200(2) (one representative);

(14) a motion to record a vote in the journal (two representatives);

(15) an appeal of the ruling of the presiding officer pursuant to H20-20(1) or H20-80(2) (three representatives);

(16) a motion to speak more than once on a debatable motion pursuant to H50-80(1) (unanimous vote);

(17) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee pursuant to H70-50 (15 representatives).

Entire Legislature

(1) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature).

H50-170. Reconsideration — time restriction. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

(5) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(6) There may be only one reconsideration vote on a specific issue on a legislative day.

H50-180. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-190. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-200. Voting — conflict of interest — present by electronic means. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House.

(5) A member may be present for a vote by electronic means.

H50-210. Changing a vote — consent required. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. The motion must be made on Order of Business No. 9, motions. All of the members present and voting are required to consent to the change in order for it to be effective.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-220. Absentee votes — restrictions. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

(5) Absentee voting is not allowed on third reading or on motions specified as present and voting pursuant to H50-70.

H50-230. Recess. The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

H50-240. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-250. Adjournment sine die. Subject to Article V, section 10(5), of the Montana Constitution, a representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6
Motions

H60-10. Proposal for consideration. (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

H60-20. Nondebatable motions. The following motions, in addition to any other motion specifically designated, must be decided without debate:

(1) to adjourn;

(2) for a call of the House;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) to table or to take from the table;

(6) to call for the previous question or for cloture;

(7) to amend a nondebatable motion;

(8) to divide a question;

(9) to suspend the rules; and

(10) all incidental motions, such as motions relating to voting or of a general procedural nature.

H60-30. Motions allowed during debate. (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer or rerefer; and

(i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

H60-40. Motions to adjourn or recess. (1) A motion to adjourn or recess is always in order, except:

(a) when the House is voting on another motion;

(b) when the previous question has been ordered and before the final vote;

(c) when a member entitled to the floor has not yielded for that purpose; or

(d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) A motion to adjourn sine die pursuant to H50-250 is subject to Article V, section 10(5), of the Montana Constitution.

(3) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

H60-50. Motion to table. (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) After a vote on a motion to table is carried or fails, the motion cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

H60-60. Motion to postpone. A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

H60-70. Motion to refer. When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

H60-80. Terms of debate on motion to refer or rerefer. (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

H60-100. Moving the previous question after a motion to table. (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

H60-110. Standard motions. The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was ( ) with a vote tally of ____ for and ____ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

CHAPTER 7

Rules

H70-10. House rules — amendment — report timing. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H70-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H70-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H70-40. Supplementary rules. Mason's Manual of Legislative Procedure (2000) governs House proceedings in all cases not covered by House rules.

H70-50. Interpreting rules — appeal. The Speaker shall interpret all questions on House rules, subject to appeal by any 15 representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on the next legislative day. The decision of the House Rules Committee may be appealed to the House by any representative.

H70-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Appendix

(1) Except as provided in subsections (2) through (4), legislation dealing with an enumerated subject must be referred to a standing committee as follows:

Agriculture: Agriculture; country of origin labeling for products; crops; crop insurance; farm subsidies; fuel produced from grain; grazing (other than state land leases); irrigation; livestock; poultry; and weed control.

Appropriations: Appropriations for the Legislature, general government, and bonding, including supplemental appropriations and the coal severance tax.

Business and Labor: Alcohol regulation other than taxation; associations; corporations; credit transactions; employment; financial institutions; gambling; insurance; labor unions; partnerships; private sector pensions and pension plans; professions and occupations other than the practice of law; salaries and wages; sales; secured transactions; securities regulation other than criminal provisions; sports other than hunting, fishing, and competition water sports; trade regulation; unemployment insurance; the Uniform Commercial Code; and workers' compensation.

Education: Higher education; home schools; K-12 education; religion in schools; school buildings and other structures; school libraries and university system libraries; school safety; school sports; school staff other than teachers; school transportation; students; teachers; and vocational education and training.

Ethics: Ethical standards applicable to members, officers, and employees of the House and ethical standards for lobbyists.

Federal Relations, Energy, and Telecommunications: Energy generation and transmission; Indian reservations; international relations; interstate cooperation and compacts, except those relating to law enforcement and water compacts; relations with the federal government; relations with

sovereign Indian tribes; telecommunications; and utilities other than municipal utilities.

Fish, Wildlife, and Parks: Fish; fishing; hunting; outdoor recreation; parks other than those owned by local governments; relations with federal and state governments concerning fish and wildlife; Virginia City and Nevada City; water sports; and wildlife.

Human Services: Developmentally disabled persons; disabled persons; health; health and disability insurance; housing; human services; mental illness or incapacity; retirement other than pensions and pension plans; senior citizens; tobacco regulation other than taxation; and welfare.

Judiciary: Abortion; arbitration and mediation; civil procedure; constitutional amendments; consumer protection; contracts; corrections; courts; criminal law; criminal procedure; discrimination; evidence; family law; fees imposed by or relating to the court system; guaranty; human rights; impeachment; indemnity; judicial system; landlord and tenant; law enforcement; liability and immunity from liability; minors; practice of law; privacy; property law; religion other than in schools; state law library; surety; torts; and trusts and estates.

Legislative Administration: Interim committees and matters related to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

Local Government: Cities; consolidated governments; counties; libraries and parks owned or operated by local governments; local development; local government finance and revenue; local government officers and employees, local planning; special districts and other political subdivisions, except school districts; towns; and zoning.

Natural Resources: Board of Land Commissioners; dams, except for electrical generation; emission standards; environmental protection; extractive activities; fires and fire protection, except for a local government fire department; forests and forestry; hazardous waste; mines and mining; natural gas; natural resources; oil; pollution; solid waste; state land, except state parks; water and water rights; water bodies and water courses; and water compacts.

Rules: House rules; joint rules; legislative procedure; jurisdictions of committees; and rules of decorum.

State Administration: Administrative rules; arts and antiquities; ballots; elections; initiative and referendum procedures; military affairs; public contracts and procurement; public employee retirement systems; state buildings; state employees; state employee benefits; state equipment and property, except state lands and state parks; state government generally; state-owned libraries other than the state law library; veterans; and voting.

Taxation: Taxes other than fuel taxes.

Transportation: Fuel taxes; highways; railroads; roads; traffic regulation; transportation generally; vehicles; and vehicle safety.

(2) If a select committee is created to address a specific subject, then bills relating to that subject must be assigned to the select committee.

(3) (a) If legislation deals with more than one subject and the subjects are assigned to more than one committee, the bill must be assigned to a class one committee before a class two committee and to a class two committee before a class three committee. If there is a conflict of subjects between the same class of committees, then the bill must be assigned by the Speaker.

(b) If a bill contains substantive provisions dealing with policy and an appropriation, the bill must be referred to the committee with jurisdiction over the subject addressed in the policy provisions. If the bill is reported from the committee to which it was assigned, the Speaker may rerefer the bill to the Appropriations Committee. The referral must be announced to the House. The rereferral does not require action or approval by the House, but may be overturned by a majority vote.

(4) If a committee chair upon consultation with the vice chair determines that the committee cannot effectively process all bills assigned to the committee because of time limitations, the chair shall, in writing, request the Speaker to reassign specific bills. The Speaker shall reassign the bills to an appropriate committee. The reassignments must be announced to the House. The reassignments do not require action or approval by the House, but may be overturned by a three-fifths vote.

Adopted January 6, 2011

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PRESIDENT OF THE UNITED STATES, THE DEPARTMENT OF DEFENSE, AND CONGRESS TO RECONSIDER THE PROPOSED RELOCATION OF THE F-15C/D MISSION OUT OF GREAT FALLS, MONTANA, CONDUCT AN IMPROVED ANALYSIS BASED ON ACTUAL DATA INSTEAD OF ASSUMPTIONS, AND RECONSIDER THE TOTAL CONTRIBUTIONS OF MONTANA AND BENEFITS TO THIS COUNTRY OF RETAINING THE F-15C/D MISSION IN MONTANA.

WHEREAS, since the activation in 1947 of the Montana Air National Guard, Montanans have flown this nation's premier fighter aircraft from the P-51 to the F-86, F-89, F-102, F-106, F-16, and F-15; and

WHEREAS, in Fiscal Year 2010, the Montana Air National Guard had payroll of $41,248,479, which supported 1,050 drill-status airmen and soldiers of which 340 members were full-time employees; and

WHEREAS, the Montana Air National Guard has received numerous national awards, including the Air Force Outstanding Unit Award eight times, the Spaatz Trophy, the Hughes Trophy, and the William Tell Award; and

WHEREAS, the Great Falls community is the only community in the nation to be awarded the Fisher Award from the Department of Defense recognizing humanitarian support of the U.S. military; and

WHEREAS, the Montana Air National Guard has honorably served this country with overseas missions four times in the past decade and is currently serving an ALERT mission in Hawaii; and

WHEREAS, the Montana Air National Guard's reenlistment rate is at 94% as compared with the national average of 86%; and

WHEREAS, Great Falls International Airport, which is home to the Montana Air National Guard, has completed environmental impact studies for aircraft noise mitigation and, using taxpayer money, is currently providing noise mitigation to surrounding homes that offsets noise levels of the F-15 and next-generation tactical fighter aircraft; and

WHEREAS, Great Falls International Airport lacks encroachment issues and in times of emergency could use the currently inactive Malmstrom Air Force Base runway for aircraft recovery by reactivating the runway using the Federal

Aviation Administration Military Airplane Program funding, upon approval by the Air Force; and

WHEREAS, the Great Falls International Airport Authority currently leases space to the Montana Air National Guard at the airport for a fee of $1.00 a year in exchange for the Montana Air National Guard providing all firefighting services to the airport, which includes making available more than $3 million in firefighting equipment and $2 million in firefighters' annual payroll; and

WHEREAS, 3 years ago the Montana Air National Guard was tasked with conversion from F-16 aircraft to F-15 aircraft and completed the total conversion at a cost to the taxpayers of nearly $80 million, including construction of a new Corrosion Control Facility, a new Operations Facility, additional space for munitions storage, and engine shop expansion. Added to that was pilot training at a cost to the public of $55 million and maintenance training at a cost of $3 million. The total F-16 to F-15 conversion was accomplished with savings to the taxpayers of more than $2 million, with operational status achieved 1 year ahead of schedule; and

WHEREAS, the 7,000 square miles provided by the Hays Military Operations Area in northcentral Montana offers a virtually unencumbered airspace unique in its capacity to provide full-spectrum joint, combined, and integrated combat arms military training free of encroachment, electronic warfare constraints, and other restrictions that are present at other areas in the continental United States. This "National Treasure" airspace is particularly well-suited for future Air Superiority Mission training, particularly for next-generation tactical fighter aircraft that require significant airspace for their "Supercruise" capability; and

WHEREAS, Montana in the past has lost military missions and assets with significant impacts to this state's finances and jobs, including the base closure at Glasgow, which resulted in the loss of 16,000 residents; and

WHEREAS, funding to maintain the F-15C/D mission in Great Falls is to end in Fiscal Year 2012, with notification already sent by the Secretary of the Air Force and the federal government that the F-15C/D mission is to be relocated from Great Falls, Montana, to Fresno, California; and

WHEREAS, the decision to relocate was based on an Air Force cost analysis that contains questionable information and analysis and should be reconsidered based on presentation of actual data and accurate analysis.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana House questions the assumptions made and the accuracy of the analysis used in making the decision to relocate the F-15C/D mission out of Great Falls to Fresno, California, and requests a reconsideration of the decision based on further analysis and documentation regarding what truly is in the best interest of Montana and federal taxpayers. The following should be included in the documentation:

(1) alert status impacts using three aircraft rather than the five aircraft used in the previous business case analysis;

(2) inclusion of the costs of pilot training for Fresno pilots converting to F-15 aircraft;

(3) inclusion of the costs for backfilling alert missions during the conversion from F-16 to F-15 missions in Fresno;

(4) exclusion of costs already incurred in Great Falls for MILCOM (military communications) improvements;

(5) inclusion of the costs of an upcoming 18-month environmental impact study that must be conducted in the Fresno area because of a change in mission;

(6) inclusion of the cost of noise mitigation efforts and activities that will need to be undertaken in Fresno related to F-15 noise issues, including the costs of buying and demolishing homes that already have undergone taxpayer-funded noise mitigation for past missions but that now stand in what are considered unacceptable noise contours for the F-15;

(7) inclusion of the costs of replacing VORTAC and TACAN systems in Fresno; and

(8) inclusion of the costs to fix clear-zone requirements for munitions in Fresno. The current munitions facilities have active commercial taxiways in the explosive potential areas, and resolving this issue may add considerable costs.

BE IT FURTHER RESOLVED, that the Montana House ask the President of the United States, the Secretary of Defense, and the Secretary of the Air Force to stay the decision to relocate the F-15C/D mission to Fresno while a federal investigation is underway regarding a limited number of pilots and commanders within the Fresno Air National Guard and completely reconsider the decision if convictions are obtained based on the investigation.

BE IT FURTHER RESOLVED, that the Montana House protests the projected loss of 200 jobs of drill-status members of the National Guard, which is a projected result of a conversion from the F-15 to a C-27J Spartan aircraft mission. The loss of jobs includes the loss of 75 to 100 full-time National Guard employees, which means a loss of $9 million to the National Guard payroll a year, not including or considering the loss of spouse or other family member employment in Montana. The financial loss also has a ripple effect on lost revenues from medical payments and economic activities. Further, incorporation of the new C-27J mission is estimated at $15 million, including a new corrosion control facility and a nose dock to be added to the large hangar building in Great Falls. In addition, pilot training costs of $20 million and maintenance training costs of $3 million will be charged to taxpayers. While the new rugged military airlift platform can be configured for troop, medevac, or cargo transport, the C-27J aircraft has no firefighting or fire suppression capability.

BE IT FURTHER RESOLVED, that the Montana House requests reconsideration of the decision made by the Secretary of the Air Force that included expenditures of $80 million to convert the Air National Guard in Great Falls to the F-15C/D mission but now transfers that mission to Fresno, California, with an additional expenditure of $40 million projected in Montana to convert and modify these same new facilities for the C-27J mission and a projected need for much greater expenditures to convert and modify F-16 facilities and training for the F-15C/D mission in California. The Montana House further protests the loss of taxpayer dollars spent over the last 3 years on a fighter mission that is to be relocated, particularly during weak economic times, with reduced Department of Defense budgets.

BE IT FURTHER RESOLVED, that the Montana House considers the loss of jobs, loss of local and state revenues, plus the associated diminution of taxes related to loss of the F-15C/D mission, even with the addition of the C-27J mission, to be catastrophic to the economy in Cascade County and to all Montanans.

BE IT FURTHER RESOLVED, that the Montana House recognizes the rich and honorable tradition in Montana of piloting fighter aircraft in defense of our great nation and that Air Force modernization of the F-15C/D aircraft with

Active Electronically Scanned Array radars and new efficient and more powerful engines are likely to allow the F-15C/D aircraft to operate safely and effectively through at least 2025, as determined by full-scale fatigue testing.

BE IT FURTHER RESOLVED, that the national treasure of the Hays Military Operations Area, which supports unencumbered aircraft use, is at risk of being lost if the F-15C/D mission is moved from the State of Montana.

BE IT FURTHER RESOLVED, that the Montana House considers Montana to be a growth area for Unmanned Aircraft System technology, flight, evaluation, and testing as well as an ideal training ground for unmanned aircraft systems and aircraft mitigation and defense training and that Montana's growing unmanned aircraft system industry, if used in conjunction with a retained F-15C/D mission and ground-based radar in Montana, could be key to addressing threats to the airspace and national safety of the United States posed by unmanned aircraft systems.

BE IT FURTHER RESOLVED, that the Montana House is concerned about possible reductions in firefighting services or equipment at the Great Falls International Airport provided by the Montana Air National Guard in exchange for a $1.00 lease, a service that has been of great value to citizens that fly commercial aircraft into Montana.

BE IT FURTHER RESOLVED, that the Montana House considers issues of encroachment and munitions safety to be nonproblems in Montana but still unresolved in California.

BE IT FURTHER RESOLVED, that the Montana House protests the appearance of a penalty against the Montana Air National Guard and the State of Montana when a fighter mission is transferred out of Montana, after numerous awards, a transition from the F-16 to F-15 fighters under cost and ahead of schedule, intense community support, unmatched reenlistment success and employee retention, and great and effective leadership at the local and state levels, to Fresno where portions of the Air National Guard are under an investigative cloud for fiscal improprieties.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to President of the United States Barack Obama, Secretary Robert Gates at the Department of Defense, Senate Majority Leader Harry Reid, Speaker of the House of Representatives John Boehner, Montana's Congressional Delegation, and the Governor, urging them to do all within their authority to retain the F-15C/D mission at the Montana Air National Guard 120th Fighter Wing as a measure of fiscal responsibility and safety for the people of Montana and the United States today and into the future.

Adopted April 13, 2011

Senate Joint Resolutions

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

JOINT RULES OF THE MONTANA SENATE AND HOUSE OF REPRESENTATIVES

CHAPTER 10

Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)). The procedure for obtaining consent is contained in Joint Rule 20-10.

10-50. Access of media — registration — decorum — sanctions. (1) Subject to the presiding officer's discretion on issues of decorum and order, a registered media representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

(2) The presiding officer shall authorize the issuance of cards to media representatives to allow floor access, and media representatives holding the cards are subject to placement on the floor by the presiding officer. The presiding officer may delegate enforcement of this rule to the office of the Secretary of the Senate, Chief Clerk of the House, the respective Sergeant-at-Arms, or the Legislative Information Officer. The privilege may be revoked or suspended for a violation of decorum and order as agreed to by the media representative upon application for registration.

(3) Registered media representatives may be subject to seating in designated areas. Overflow access will be in the gallery.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs. (section 2-2-112, MCA)

10-70. Telephone calls and internet access. (1) Long-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members. A member's access to the internet through a permissible server is a proper use of the state communication system if the use is for legislative business or is within the scope of permissible use of long-distance telephone calls.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones and internet access by their staff, including aides and interns, and may not authorize others to use state phones or state servers to access the internet.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited — reporting. (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee of the house of representatives or the senate, the violation must be reported to the employee's supervisor or, if the offender is the supervisor for the house of representatives or the senate, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a permanent legislative employee, the report should be made to the employee's supervisor or, if the offender is the supervisor, to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(4) If the offended party is a supervisor for the house of representatives or the senate, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor of permanent legislative employees, the violation must be reported to the appropriate division director. If the offender is a division director, the report should be made to the presiding officer of the appropriate statutory committee.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee or supervisor, the employee or supervisor is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Services Division. (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

(3) The Legislative Services Division shall train journal clerks for both houses.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House, who shall give notice to the sponsor of the bill or amendment. The form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing with the Secretary of the Senate or the Chief Clerk of the House by the end of the next legislative day following receipt of the notice. The Senate or House shall vote on whether or not to uphold the objection. If the objection is upheld, the Secretary of the Senate or the Chief Clerk of the House shall notify the Executive Director of the Legislative Services Division, and the engrossing staff shall change the bill to remove the correction or corrections to which the objection was made.

(4) For the purposes of this rule, "engrossing" means placing amendments in a bill.

10-130. Bills — sponsorship — style — format — withdrawal prohibited. (1) A bill must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) backed with a page of substantial material that includes spaces for notations for tracking the progress of the bill; and

(d) introduced. Introduction constitutes the first reading of the bill.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

10-140. Voting on bills — constitutional amendments. (1) A bill may not become a law except by vote of the constitutionally required majority of all

the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) This rule does not prevent a committee from tabling a bill proposing an amendment to The Constitution of the State of Montana.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made available to the public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(i) amend;

(ii) recommend passage or nonpassage;

(iii) recommend concurrence or nonconcurrence; or

(iv) indefinitely postpone.

(b) The text of all proposed amendments in Committee of the Whole must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society. If electronically recorded minutes are kept for a committee, a written log conforming to section 2-3-212(2), MCA, must also be kept.

10-160. Journal. Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) make a daily journal available to all members.

10-170. Journals — authentication — availability. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives must be authenticated by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 20
Relations With Other House

20-10. Consent for adjournment or recess. As required by Article V, section 10(5), of the Montana Constitution, the consent of the other house is required for adjournment or recess for more than 3 calendar days. Consent for adjournment is obtained by having the house wishing to adjourn send a message to the other house and having the receiving house vote favorably on the request. The receiving house shall inform the requesting house of its consent or lack of consent. Consent is not required on or after the 87th legislative day.

CHAPTER 30
Committees

30-10. Joint committee chair — exception. Except as provided in Joint Rule 30-50 concerning the joint meetings of the Senate Finance and Claims Committee and the House Appropriations Committee, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees — exception. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee shall agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees — subject matter restrictions. (1) If either house requests a conference committee and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered. A conference committee meeting must be conducted as an open meeting, and minutes of the meeting must be kept.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as provided in subsection (1). A free conference committee may discuss and propose amendments to a bill in its entirety and is not confined to a particular amendment. However, a free conference committee is limited to consideration of amendments that are within the scope of the title of the introduced bill.

30-40. Conference committee — enrolling. A conference committee report must give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of general appropriation bills. (1) All general appropriation bills must first be considered by a joint subcommittee composed of designated members of the Senate Finance and Claims Committee and the House Appropriations Committee, and then by each committee separately.

(2) Joint meetings of the House Appropriations Committee and the Senate Finance and Claims Committee must be held upon call of the chair of the House Appropriations Committee, who is chair of the joint committee.

(3) The committee chair of the Senate Finance and Claims Committee or of the House Appropriations Committee may be a voting member in the joint subcommittees if:

(a) either house has fewer members on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote at the time that a question is called. A vote may not be held open to facilitate voting by a chair.

30-60. Estimation of revenue. The Revenue and Transportation Interim Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature. (5-5-227, MCA)

30-70. Appointment of interim committees. As provided for in section 5-5-211(6), MCA, 50% of interim committees must be selected from the following legislative standing committees:

(1) Economic Affairs Interim Committee:

(a) Senate Agriculture, Livestock, and Irrigation Committee;

(b) Senate Business, Labor, and Economic Affairs Committee;

(c) Senate Finance and Claims Committee;

(d) House Agriculture Committee;

(e) House Business and Labor Committee;

(f) House Federal Relations, Energy, and Telecommunications Committee; and

(g) House Appropriations Committee;

(2) Education and Local Government Interim Committee:

(a) Senate Education and Cultural Resources Committee;

(b) Senate Local Government Committee;

(c) Senate Finance and Claims Committee;

(d) House Education Committee;

(e) House Local Government Committee; and

(f) House Appropriations Committee;

(3) Children, Families, Health, and Human Services Interim Committee:

(a) Senate Public Health, Welfare, and Safety Committee;

(b) Senate Finance and Claims Committee;

(c) House Human Services Committee; and

(d) House Appropriations Committee;

(4) Law and Justice Interim Committee:

(a) Senate Judiciary Committee;

(b) Senate Finance and Claims Committee;

(c) House Judiciary Committee; and

(d) House Appropriations Committee;

(5) Revenue and Transportation Interim Committee:

(a) Senate Taxation Committee;

(b) Senate Highways and Transportation Committee;
(c) Senate Finance and Claims Committee;
(d) House Taxation Committee;
(e) House Transportation Committee; and
(f) House Appropriations Committee;
(6) State Administration and Veterans' Affairs Interim Committee:
(a) Senate State Administration Committee;
(b) Senate Finance and Claims Committee;
(c) House State Administration Committee; and
(d) House Appropriations Committee;
(7) Energy and Telecommunications Interim Committee:
(a) Senate Energy Committee;
(b) House Federal Relations, Energy, and Telecommunications Committee;
(c) House Appropriations Committee; and
(d) Senate Finance and Claims Committee.

CHAPTER 40
Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills — introduction in House — feed bill. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Appropriations Committee.

40-30. Effective dates. (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed in the joint resolution (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures — drafting priority — agency and committee bills. (1) Prior to a regular session, a person entitled to serve in that session, referred to as a "member", or a legislative committee is entitled to request bill drafting services from the Legislative Services Division. Deadlines for requesting certain types of bills during a legislative session are contained in Joint Rule 40-50.

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least

five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator. The requestor must pick up the bill and sign a receipt indicating delivery of the bill and may either introduce the bill or give the bill to another legislator for introduction.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) (a) Except as provided in subsection (2)(b) or this subsection, the staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each direct the staff of the Legislative Services Division to assign a higher priority to 10 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House.

(b) Except for bill draft requests described in subsection (1)(d)(iii), if a draft bill has not been received by the Legislative Services Division by November 15 for a bill by request of an agency or entity, the draft loses its priority under this rule.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form. The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them to the requesting members. The original bill back must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) (a) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name, and the chief sponsor may not be changed. Except as provided in subsection (4)(b), in each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(b) The first 15 House bills may be reserved for preintroduced bills.

(5) (a) Any bill proposed by an interim or statutory legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced bill and may not be placed on a bill whose subject matter

was requested by an agency or statutory or interim committee prior to the convening of the session. Unless requested by an individual member, a bill draft request submitted at the request of an agency must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee. Except as provided in subsection (5)(b), an agency or committee bill request must be preintroduced or the request is canceled. Preintroduction of an agency, committee, or individual legislator's bill must occur no later than 5 p.m. on December 15th prior to the convening of a regular legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue.

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

40-50. Schedules for drafting requests and bill introduction. (1) The following schedule must be followed for submission of drafting requests.

	Request Deadline 5:00 P.M. Legislative Day
• General Bills and Resolutions	12
• Revenue Bills	17
• Committee Bills and Resolutions	36
• Committee Revenue Bills and Bills Proposing Referenda	62
• Committee Bills implementing provisions of a general appropriation act	75
• Interim study resolutions	75
• Appropriation Bills	No Deadline
• Resolutions to express confirmation of appointments	No Deadline
• Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline

(2) Bills and resolutions must be introduced within 2 legislative days after delivery. Failure to comply with the introduction deadline results in the bill draft being canceled.

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) recognize relations with other governments, sister states, political subdivisions, or similar governmental entities;

(c) request, but not require, a legislative entity to conduct an interim study;

(d) adopt, amend, or repeal the joint rules;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution;

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana; or

(k) approve the organization of a new community college district under section 20-15-209, MCA.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-65. Appropriation required for bills requesting interim studies. A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill,

shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) The Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 10 days to prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor.

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note or, if required, an updated fiscal note reflecting committee action.

40-110. Sponsor's fiscal note rebuttal. (1) If a sponsor elects to prepare a sponsor's fiscal note rebuttal pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note rebuttal form to the presiding officer within 4 days of the election. The form must identify the bill number, the sponsor of the bill, the date prepared, the version of the fiscal note being rebutted, the reasons the sponsor disagrees with the fiscal note, the items or assumptions in the fiscal note that the sponsor believes are incorrect, and the sponsor's estimate of the fiscal impact, if an estimate is available.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note rebuttal.

(3) Upon receipt of the completed sponsor's fiscal note rebuttal form, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the form must be identified as a sponsor's fiscal note rebuttal, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal note rebuttals and shall print the completed sponsors' fiscal note rebuttal forms on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(b), must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title. Introduction constitutes the first reading of the bill.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A bill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed if the bill is amended. Committee of the Whole amendments must be included in the engrossed bill. If the bill is not amended, the bill must be sent to printing. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. A bill amended by the second house when the effect of the combined amendments is to return the bill to the form that the bill passed the house in which the bill originated is not considered to have been amended and need not be returned to the house of origin for acceptance or rejection of the amendments. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house shall transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

40-190. Transmittal of bills between houses — referral — hearing. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

(3) Transmitted bills must be referred to committee and scheduled for hearing.

40-200. Transmittal deadlines — two-thirds vote requirement. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, a bill proposing a referendum, an interim study resolution, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills, committee bills implementing the general appropriations bill, the revenue estimating resolution, interim study resolutions, bills proposing referenda, and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills and bills proposing referenda must be transmitted to the other house on or before the 71st legislative day.

(ii) Amendments to revenue bills, received from the other house, must be transmitted to the house of origin on or before the 82nd legislative day.

(iii) A revenue bill is one that either increases or decreases revenue by enacting, eliminating, increasing, or decreasing taxes, fees, or fines or by suspending or otherwise changing the allocation of revenues.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day. A fund transfer within the state treasury is not an appropriation for purposes of this section.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted to the Senate no later than the 60th legislative day.

(b) Amendments to the revenue estimating resolution must be transmitted to the House no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

40-210. Governor's veto. (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment — procedure. (1) The Governor may return any bill to the Legislature with recommendations for amendment. The Governor's recommendations for amendment must be considered first by the house in which the bill originated.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

60-40. Tenure of joint rules. The joint rules remain in effect until removed by a joint resolution or until a new Legislature is elected and takes office.

Adopted January 17, 2011

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO SUPPORT AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO REQUIRE A BALANCED FEDERAL BUDGET EXCEPT IN TIMES OF WAR.

WHEREAS, Article V of the United States Constitution provides methods for proposing amendments; and

WHEREAS, the Legislature of Montana deems an amendment for the United States Constitution requiring a balanced federal budget, except in times of war, necessary for the good of the American people.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana in accordance with the provisions of Article V of the United States Constitution supports an amendment to the United States Constitution to require a balanced federal budget, except in times of war, and to prevent the federal government from appropriating or otherwise spending funds in excess of anticipated revenues.

BE IT FURTHER RESOLVED that a copy of this resolution be dispatched to the Majority Leader of the United States Senate, to the Speaker of the United States House of Representatives, to the Secretaries of the United States and Montana Senates, to the Clerks of the United States and Montana Houses of Representatives, to each member of the Montana congressional delegation, and to the presiding officers of each house of the Legislature of each state in the Union requesting their cooperation.

Adopted April 5, 2011

SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND THE PRESIDENT OF THE UNITED

STATES TO EXPEDITE THE FEDERAL LAND USE DECISION PROCESSES IN MONTANA, TO RECOGNIZE THE IMPORTANCE OF TRADITIONAL MULTIPLE RESOURCE USES ON FEDERAL LANDS, NOT TO IMPOSE RESTRICTIONS ON ADDITIONAL FEDERAL LAND OR MINERALS THAT WOULD PRECLUDE DEVELOPMENT, AND TO SUPPORT FEDERAL LEGISLATION PLACING CHECKS AND BALANCES ON THE PRESIDENT'S POWERS TO DECLARE NATIONAL MONUMENTS.

WHEREAS, Montana is rich in natural resources and abundant agricultural land; and

WHEREAS, responsible use and development of those resources through oil and gas production, coal and hard-rock mining, timber harvesting, farming, and ranching add to the well-being of Montana's rural communities by providing jobs and educational benefits to Montana citizens; and

WHEREAS, federal lands comprise more than 30% of the State of Montana; and

WHEREAS, of the more than 31 million acres of federally owned oil and gas minerals in Montana, over 25% are restricted to prevent development of oil and gas minerals; and

WHEREAS, the State of Montana receives 49% of the royalty revenue from the development of federal minerals in addition to existing production and property taxes and one-quarter of the state's share remains in the county where development occurs to support local government needs and local schools, while the remaining share of federal revenues support programs across Montana, including the university system, offsetting the need for higher taxes and tuition costs on its citizens; and

WHEREAS, the Montana agricultural industry represents a $2.9 billion annual business, but the economic value to local communities of livestock grazing on federal land is often a secondary consideration in the development of federal land preservation plans for the West; and

WHEREAS, the nature of checkerboard ownership severely impacts adjacent private landowners when federal minerals, grazing, and forest rights are restricted, and these impacts include negative effects on bonus and royalty revenue, forest receipts, and grazing income along with the associated income, property tax revenue, and the local jobs that are produced as a result of these activities and production; and

WHEREAS, it now requires 5 to 10 years to complete a federal resource management plan that has a life expectancy of only 15 to 20 years; and

WHEREAS, protracted delays in updating management plans result in increased planning and capital-carrying costs for producers making development opportunities on federal lands more costly and less competitive; and

WHEREAS, new burdensome onshore leasing policies being implemented by the United States Department of the Interior will remove significantly more federal lands from leasing, add more delay through redundant land use analyses, excessive resource surveys, and increased costs to federal mineral development while failing to improve land management; and

WHEREAS, Department of the Interior Secretary Ken Salazar issued Secretarial Order No. 3310 in December 2010 affirming that protecting wilderness characteristics on public lands is a high priority for the Bureau of Land Management, requiring the Bureau to maintain wilderness resource inventories on a regular and continual basis, and withholding use permits until

land use planning and project level decisions are made to protect wilderness characteristics into perpetuity, which essentially creates more wilderness without the consent of Congress.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana urges the United States Congress and the President of the United States to:

(1) focus adequate federal resources on funding to complete environmental review processes for federal land use decisions within improved timelines;

(2) review the new onshore leasing program to ensure that:

(a) there are no additional land withdrawals;

(b) further time delays will not occur; and

(c) mineral resource development of federal lands in Montana will remain competitive; and

(3) recognize that multiple uses such as forestry, livestock grazing, and mineral development on federal lands are traditional, historic, and beneficial uses that must be protected on an equal footing and incorporated into all federal land management planning.

BE IT FURTHER RESOLVED, that:

(1) no additional federal lands or minerals should be restricted from development beyond the current 25% of restricted federally owned minerals and that a review of the existing restricted acreage be undertaken to assess whether those restrictions are still necessary;

(2) the United States Congress should support amendments to the American Antiquities Act of 1906, currently pending in Congressional Committees, that prescribe checks and balances on the President's power to declare national monuments; and

(3) the United States Congress should nullify Secretarial Order No. 3310.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Majority Leader and Minority Leader of the United States Senate, the Speaker and the Minority Leader of the United States House of Representatives, and the Montana Congressional Delegation.

Adopted April 2, 2011

SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING OPPOSITION TO FEDERAL LEGISLATION THAT WOULD REDEFINE WHICH WATERS ARE SUBJECT TO THE FEDERAL WATER POLLUTION CONTROL ACT.

WHEREAS, federal legislation has been introduced in the past two sessions of Congress, H.R. 2421 in 2007 and S. 787 in 2009, to clarify which waters are subject to the jurisdiction of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.); and

WHEREAS, the proposed federal legislation has sought to clarify jurisdiction by striking the term "navigable waters" and replacing it with "waters of the United States", defined as "all waters subject to the ebb and flow

of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing"; and

WHEREAS, striking the term "navigable waters" would potentially expand the federal government's reach beyond what was intended and thereby blur jurisdictional authority to manage and regulate water resources within state and local government jurisdictions; and

WHEREAS, given the ambiguity of the jurisdictional reach in past proposed Congressional legislation, the implementation of this kind of proposal may lead to increased litigation and uncertainty among public and private stakeholders, including homeowners, farmers, water districts, and state and federal agencies, among others.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the 62nd Legislature adamantly opposes any Congressional legislation that would redefine which waters are subject to the Federal Water Pollution Control Act and urges Congress not to propose, introduce, or enact any legislation to that effect in the future.

(2) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation, the Majority Leader of the United States Senate, and the Speaker of the United States House of Representatives.

Adopted April 2, 2011

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS AND THE COMMISSIONER OF HIGHER EDUCATION TO STUDY THE GROWING DIVIDE BETWEEN RURAL AND URBAN COMMUNITIES AND PRESENT THE FINDINGS AND THE RECOMMENDATIONS OF THE STUDY TO THE LEGISLATURE'S EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE.

WHEREAS, sustainable economic development in Montana is jeopardized by a growing divide between Montana's rural and urban communities; and

WHEREAS, rural communities face increasing economic challenges due to a declining population and limited access to technology, capital, health care, educational resources, and agricultural market services; and

WHEREAS, urban communities are dependent on rural areas to meet increasing demands for energy, agricultural products, timber, clean water, hunting, fishing, and recreation; and

WHEREAS, urban and rural development associated with inadequate planning continues to shrink the rural areas available for agricultural production, energy production, and natural resource development required to meet increasing demand; and

WHEREAS, rural and urban communities are interdependent and should share a common interest in and an aspiration for a sustainable economic future for Montana; and

WHEREAS, Montana needs to develop solutions to the rural and urban divide that can be reached only through partnership and collaboration based on

an integrated community vision that connects rather than divides Montana's rural and urban communities; and

WHEREAS, the Montana University System has the knowledge base, research facilities, and outreach capabilities to provide a leadership role in promoting research, analysis, and dialog on these issues; and

WHEREAS, if Montana establishes a successful ongoing approach to examining rural and urban challenges and developing integrated solutions, Montana's approach may serve as a model to assist other states in finding a common vision for improved quality of life for both rural and urban communities and a more sustainable economic future.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Regents and the Commissioner of Higher Education are urged to oversee and direct a study that:

(1) examines the nature of the rural and urban divide in Montana;

(2) requires the collection and analysis of data concerning Montana's rural and urban demographics that will focus on agricultural and livestock production capabilities, business and industrial growth, workforce needs, food and water consumption, energy consumption and production capabilities, natural resource consumption and development capabilities, access to health care and educational resources, recreation and hunting opportunities, and other rural and urban issues;

(3) brings urban and rural interest groups, stakeholders, and policy analysts together to share information and discuss ways to build partnerships and to develop action plans for moving Montana toward a more inclusive format in rural and urban affairs; and

(4) explores the feasibility of conducting a pilot project and establishing and funding a rural-urban institute as part of the Montana University System that can provide ongoing research and analysis of rural and urban interdependence and facilitate ongoing strategic planning in the public and private sectors to overcome the rural-urban divide and move Montana forward as one Montana.

BE IT FURTHER RESOLVED that the findings and recommendations of the study be presented to the Legislature's Education and Local Government Interim Committee before July 1, 2012.

Adopted April 6, 2011

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RELATING TO SUPPORT FOR THE PARENTAL RIGHTS AMENDMENT; AND URGING THE MEMBERS OF THE UNITED STATES CONGRESS TO SUBMIT THE PARENTAL RIGHTS AMENDMENT TO THE STATES FOR RATIFICATION.

WHEREAS, the right of parents to direct the upbringing and education of their children is a fundamental right protected by the Constitution of the United States and the Constitution of the State of Montana; and

WHEREAS, our nation has historically relied on parents, first and foremost, to meet the real and constant needs of children; and

WHEREAS, the interests of children are best served when parents are free to make child rearing decisions about education, religion, and other areas of a child's life without state interference; and

WHEREAS, in 1972, the United States Supreme Court, in Wisconsin v. Yoder, 406 U.S. 205, held that the "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"; and

WHEREAS, in 2000, in Troxel v. Granville, 530 U.S. 57, the United States Supreme Court produced six different opinions on the nature and enforceability of parental rights under the Constitution of the United States that have created confusion and ambiguity about the fundamental nature of parental rights in the laws and society of our nation and in the states; and

WHEREAS, United States Senator James DeMint of South Carolina and United States Representative Peter Hoekstra of Michigan have introduced in the United States Congress an amendment to the United States Constitution providing that the liberty of parents to direct the upbringing and education of their children is a fundamental right that may not be infringed upon by the United States or any state without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served; and

WHEREAS, this amendment will add explicit text to the Constitution of the United States to protect in perpetuity the rights of parents as they are now enjoyed without substantive change to current federal or state laws relating to these rights; and

WHEREAS, the enumeration of these rights in the text of the Constitution will preserve them from being infringed upon by the shifting ideologies and interpretations of the United States Supreme Court or by treaty or international law.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature affirms the Parental Rights Amendment to the United States Constitution as referenced in this resolution and as presented to the United States Congress by Senator James DeMint and Representative Peter Hoekstra.

BE IT FURTHER RESOLVED that the Montana Legislature urges the members of the United States Congress to submit the Parental Rights Amendment to the states for ratification.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the members of the Montana Congressional Delegation, all other members of the United States Congress, and the presiding officers of the legislatures of each of the other 49 states.

Adopted March 11, 2011

SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING EFFORTS BY THE ENVIRONMENTAL PROTECTION AGENCY TO USE EXISTING FEDERAL LAWS TO REGULATE GREENHOUSE GAS EMISSIONS.

WHEREAS, the U.S. Environmental Protection Agency has proposed or is proposing numerous new regulations, particularly in the area of air quality and the regulation of greenhouse gases, that could have major detrimental effects on the economy, jobs, and U.S. competitiveness in worldwide markets; and

WHEREAS, federal laws, such as the Clean Air Act, were never intended or designed to regulate greenhouse gases; and

WHEREAS, Montana's two U.S. senators have gone on record that Congress, not just the EPA, is the appropriate venue to consider greenhouse gas regulations; and

WHEREAS, concern is growing that with cap-and-trade legislation having failed in Congress, the EPA is attempting to obtain some of the same results through the adoption of regulations; and

WHEREAS, neither the EPA nor President Obama's administration has undertaken any comprehensive study of what the cumulative effect of all of this new regulatory activity will be on the economy, jobs, and competitiveness; and

WHEREAS, state agencies are routinely required to identify the costs of their regulations and to justify those costs in light of the benefits; and

WHEREAS, since the EPA has identified "taking action on climate change and improving air quality" as its first strategic goal for the 2011-2015 time period, the EPA should be required to identify the specific actions it intends to take to achieve these goals and to assess the total cost of all these actions together; and

WHEREAS, the Montana Legislature supports continuing improvements in the quality of the nation's air and believes that those improvements can be made in a sensible fashion without damaging the economy, as long as there is a full understanding of the cost and benefits of the regulations at issue; and

WHEREAS, the primary goal of government at the present time must be to promote economic recovery and to foster a stable and predictable business environment that will lead to the creation of jobs; and

WHEREAS, Montana is the seventh largest user of energy per capita but only ranks 49th, second to last, in take-home pay; and

WHEREAS, Montana possesses vast reserves of proven, low-cost energy, including coal, natural gas, and oil, that creates high-paying jobs; and

WHEREAS, 40% of the nation's coal used for electricity generation comes from the Powder River Basin states of Montana and Wyoming; and

WHEREAS, more than 70% of Montana's coal production is exported to generate low-cost electricity used in homes, small businesses, and manufacturing; and

WHEREAS, more than 1,100 families depend on the good-paying jobs the Montana coal industry provides; and

WHEREAS, the state of Montana receives more than $70 million in direct tax benefits annually from coal industries; and

WHEREAS, the oil and gas industry is responsible for 4,500 direct jobs in Montana, and another 7,500 indirect jobs; and

WHEREAS, production tax revenue alone accounts for more than $220 million that is distributed to state and local government and schools across the state; and

WHEREAS, the total economic impact of the petroleum industry in Montana is $9 billion; and

WHEREAS, Montana's four refineries provide more than 1,000 jobs with an average wage of over $90,000; and

WHEREAS, environmental improvement is only possible in a society that generates wealth.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 62nd Legislature requests that the United States Congress consider:

(1) adopting legislation prohibiting the EPA from utilizing existing federal laws to regulate greenhouse gas emissions, including, if necessary, defunding the EPA's greenhouse gas regulatory activities;

(2) imposing a moratorium on promulgation of any new air quality regulation by the EPA by any means necessary, except to directly address an imminent health or environmental emergency, for a period of at least 2 years; and

(3) requiring President Obama's administration to undertake a study identifying all regulatory activity that the EPA intends to undertake in furtherance of its goal of "taking action on climate change and improving air quality" and specify the cumulative effect of all of these regulations on the economy, jobs, and American economic competitiveness. This study should be a multiagency study drawing on the expertise of the EPA, agencies, and departments having expertise in and responsibility for the economy and the electric system and should provide an objective cost-benefit analysis of all of the EPA's current and planned regulation.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the members of Montana's Congressional Delegation, and the Administrator of the Environmental Protection Agency.

Adopted April 1, 2011

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA BOARD OF REGENTS OF HIGHER EDUCATION TO REQUIRE ONGOING POSTTENURE REVIEW FOR MONTANA UNIVERSITY TEACHERS; URGING THE BOARD OF REGENTS TO REQUIRE UNIVERSITY PRESIDENTS OR CHANCELLORS TO REPORT TO THE BOARD OF REGENTS ON THE POSTTENURE REVIEW PROCESS AT THEIR INSTITUTIONS; URGING THE BOARD OF REGENTS TO STUDY THE ADVANTAGES AND DISADVANTAGES OF POSTTENURE REVIEW; AND REQUESTING THE BOARD OF REGENTS TO REPORT TO THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE ON THE FINDINGS OF THE STUDY.

WHEREAS, it is in the best interest of the state to attract, retain, develop, and support high-quality Montana university teachers; and

WHEREAS, an award of tenure is necessary for attracting, retaining, developing, and supporting high-quality university teachers; and

WHEREAS, there is a direct relationship between a motivated and passionate teacher and a successful student base; and

WHEREAS, it is critical that there be performance benchmarks, quality classroom preparation, and student feedback to ensure that a tenured teacher maintains high-quality standards; and

WHEREAS, the Montana Board of Regents of Higher Education is uniquely positioned to adopt, implement, and oversee a tenure review process; and

WHEREAS, it is the desire of the Legislature to ensure that there is a review process for tenured teachers to maintain the high-quality education for which the Montana University System is renowned.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Board of Regents and the Commissioner of Higher Education are urged to oversee and direct the president or chancellor of each of the units of the Montana University System to institute a posttenure review process for all tenured faculty.

(2) That the Board of Regents is urged to direct the university presidents or chancellors to establish programs designed to assist faculty members in enhancing their teaching skills.

(3) That the Board of Regents is urged to adopt and implement a posttenure review process in which a tenured faculty member is subject to review every 5 years based on a review of several factors, including the following:

(a) an evaluation of the faculty member's teaching;

(b) an evaluation of the faculty member's research and scholarly output; and

(c) an evaluation of the contributions made by the faculty member in the area of public service to the institution and the community.

(4) That the Board of Regents is urged to ensure that a peer review is afforded the faculty member and that student evaluations are considered in the evaluation of the tenured faculty member's teaching.

(5) That, in the event that a tenured faculty member receives an unfavorable evaluation in the area of the faculty member's teaching, research, or community service, the Board of Regents is urged to include in the posttenure review process:

(a) a standard probation and reevaluation period; and

(b) loss of tenure if, during the subsequent probation and reevaluation period, the faculty member fails to demonstrate improvement in the area of teaching.

(6) That the Board of Regents is encouraged to require the university presidents or chancellors to file an annual report with the Board of Regents on the posttenure review process at the institution.

(7) That the Board of Regents is urged to study the options, advantages, and disadvantages of developing a procedure for granting tenure based solely on a faculty member's teaching ability.

BE IT FURTHER RESOLVED, that the Board of Regents is requested to report to the Education and Local Government Interim Committee no later than August 15, 2012, as to the implementation and progress of the posttenure review process.

Adopted April 8, 2011

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEVELOPMENT AND PROMOTION OF POLICIES THAT PROMOTE THE RESPONSIBLE DEVELOPMENT OF OIL AND GAS LEASES ON FEDERAL LANDS.

WHEREAS, there are 32 million acres of oil and gas minerals in Montana that are owned by the American public and administered by the Bureau of Land Management (BLM); and

WHEREAS, the federal government does not develop oil and gas itself, but instead leases development rights to private industry. Leasing demand is a function of market conditions and national energy consumption; and

WHEREAS, the decline in federal leasing of minerals makes it more difficult for companies to develop oil and gas in an environmentally responsible manner, harms economies throughout the state, and decreases state and local government revenue; and

WHEREAS, this policy puts Montana at a distinct disadvantage compared to other regions of the country that do not have significant federal lands, acting as a catalyst that will cause energy jobs and economic activity to migrate to those other regions; and

WHEREAS, policies that further slow leasing and permitting will discourage companies from operating in Montana and the state will not experience the rebound in jobs and economic growth that it otherwise would as the American economy recovers; and

WHEREAS, the oil and gas industry in Montana is a valued partner in supplying oil and natural gas resources that enhance American energy security.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Department of the Interior consider the negative impact that oil and gas leasing and permitting policies may have on Montana's economy, the jobs of its citizens, and the state and local government revenue that funds vital services such as schools, roads, and law enforcement.

(2) That the United States Department of the Interior develop policies that promote the responsible development of Montana's public lands.

(3) That the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the Majority Leader of the United States Senate, the secretary of the United States Department of the Interior, and each member of the Montana Congressional Delegation.

Adopted April 2, 2011

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING IMPROVED COMMUNICATION BY THE DEPARTMENT OF LIVESTOCK WITH PRIVATE LANDOWNERS AFFECTED BY BISON CONTROL ACTIVITIES RELATED TO THE INTERAGENCY BISON MANAGEMENT PLAN.

WHEREAS, state and federal agencies have developed the Interagency Bison Management Plan to guide the management of bison and brucellosis in and around Yellowstone National Park; and

WHEREAS, the interagency plan occasionally requires the Montana Department of Livestock to enter private land as part of its efforts to control the spread of disease to livestock and humans; and

WHEREAS, Department of Livestock activities related to bison control have the potential to create conflict with private landowners; and

WHEREAS, the Department of Livestock's bison control activities would create less conflict if better coordination and communication existed between the department and private landowners.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana encourages the Montana Department of Livestock to improve its level of communication and coordination with affected private landowners, including providing notification of bison control activities occurring on private land.

BE IT FURTHER RESOLVED, that the Legislature does not intend for the improved communication and coordination efforts to impede the Department of Livestock in carrying out its obligation to prevent and manage animal disease.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Governor, the members of the Board of Livestock, and the executive officer of the Board of Livestock.

Adopted April 2, 2011

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF BONDING REQUIREMENTS RELATED TO AGRICULTURAL COMMODITIES.

WHEREAS, Montana's agricultural industry for grain, oilseed crops, and other crops is participating in an increasingly complex global economy with new customers, new products, and new markets; and

WHEREAS, Montana agricultural commodities produced and delivered to buyers in Montana continue to increase in value, as does the value of undelivered, unsettled, or outstanding commodity contracts; and

WHEREAS, grain buyers both large and small are entering Montana grain markets for the first time; and

WHEREAS, the existing bonding requirements for these transactions were established in the past under the premise of a dissimilar and much smaller grain economy; and

WHEREAS, Montana agricultural commodity producers may be at risk financially because of archaic bonding requirements; and

WHEREAS, risk may also be attached to commodities not in immediate possession of a producer or a public warehouse, such as undelivered agricultural commodities or those in transit to a third party; and

WHEREAS, it is in the interest of the Montana agricultural commodities industry to quantify the real and potential shortfall in bonding requirements as well as the cost of adequate bonding; and

WHEREAS, responsible adjustments to the agricultural commodities industry bonding requirements and law will require an accurate assessment of outstanding liabilities incurred in the sale and trade of Montana crops.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to study the current bonding requirements relevant to the Montana agricultural commodities industry to determine:

(1) how the current bonding requirements affect the stakeholders in the agricultural commodities industry from the producers to the public warehouses, from the small independent producer or elevator to the large, multinational producer or warehouse;

(2) what bonding levels might be adequate and what mechanisms may be needed to set bonding limits for the various stakeholders to reflect asset evaluation;

(3) what amount of capital is appropriate and necessary to offset the risk involved; and

(4) bonding costs to the grain industry in the event that increased bonding levels would be warranted, taking into consideration a representative sampling of costs for both large and small commodity dealers.

BE IT FURTHER RESOLVED, that the study committee and staff are encouraged to work with the Department of Agriculture to incorporate the studies and reports that the department has collected regarding current bonding requirements and information from other states.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 26, 2011

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO ANALYZE THE SYSTEM OF VALUING CENTRALLY ASSESSED PROPERTIES AND INDUSTRIAL COMPANIES ASSESSED ANNUALLY BY THE DEPARTMENT OF REVENUE; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 63RD LEGISLATURE.

WHEREAS, the Legislature has heard concerns about centrally assessed property and large industrial facility taxation; and

WHEREAS, predictability and stability of property valuation will improve the business investment climate for Montana businesses.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or statutory committee, pursuant to section 5-5-217, MCA, to:

(1) review the statutory authority identifying the type of properties that should be assessed by the central office of the department of revenue and not by local county employees of the department. The following must be reviewed:

(a) the history and changes in the industry for properties that are currently designated as being centrally assessed; and

(b) the statutory authority regarding assessment of large industrial properties, properties that may involve characteristics or complexity that require specialized assessment but are not classic unitary businesses, and other types of property that different taxing jurisdictions have considered appropriate for being assessed centrally and locally;

(2) analyze whether there should be a relationship between a property's tax classification and the method used for assessment of that property;

(3) analyze whether property owned by a particular type of business should be centrally or locally assessed;

(4) analyze whether assessment directly by the state or local assessment should be based on separate types of property being assessed;

(5) analyze whether methods used in determining market value should differ based upon whether the assessment is determined centrally or locally;

(6) analyze how exempt intangible personal property can and should be removed from a centrally assessed unitary valuation;

(7) review the appropriateness of the percentages to deduct intangible personal property from the cost, income, and market indicators of value specified in the Administrative Rules of Montana; and

(8) any other matter relating to central assessment, including equalization with other classes of property, that the committee considers appropriate.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation, review requirements, and recommendations, be concluded before September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the committee, be reported to the 63rd Legislature.

Adopted April 18, 2011

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF HEALTH CARE WORKFORCE NEEDS AND STRATEGIES FOR MEETING THOSE NEEDS.

WHEREAS, the health and welfare of all Montanans depends on their access to health care providers and health care services; and

WHEREAS, a well-trained and well-educated health care workforce is critical to the health and well-being of Montanans and the Montana economy; and

WHEREAS, 54 of Montana's 56 counties are designated in whole or in part as health professional shortage areas, medically underserved areas, or medically underserved populations; and

WHEREAS, the population of Montana is projected to grow 21% between 2000 and 2020, resulting in a corresponding increase in the demand for health care professionals; and

WHEREAS, access to medical treatment is threatened in many communities, particularly those in rural and frontier areas, due to a lack of health care providers, such as dentists, physicians, physician assistants, and advanced practice registered nurses; and

WHEREAS, the Montana physician workforce ranks second nationwide in the number of physicians over age 65, less than 25% of physicians practice outside of the state's 7 largest cities, and 8 of the 56 counties have no physician; and

WHEREAS, the U.S. Health Resources and Services Administration projects that Montana will have 3,000 fewer registered nurses than needed by 2020; and

WHEREAS, many communities, especially those in rural and frontier areas, also report a shortage of and an aging workforce of allied health care professionals, including laboratory technicians, medical technicians, and other health professionals; and

WHEREAS, the health care sector provides highly paid, highly skilled careers in large and small communities across the state and is critically important to the state's economic growth; and

WHEREAS, the state lacks a comprehensive strategy for developing the supply of health care professionals necessary to meet the future medical needs of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to:

(1) examine Montana's health care workforce needs by:

(a) reviewing existing analyses of Montana's current health care workforce;

(b) reviewing projections related to future health care workforce trends and needs; and

(c) monitoring the ongoing work and final recommendations of the state entities that have received a federal Health Care Workforce Development Planning Grant to consider the state's long-term needs for health care workers;

(2) in order to ensure that the supply of health care professionals and health care workers is adequate to meet the projected demand, recommend a comprehensive 10-year plan for expanding health care professions and health care workforce training programs in a manner that incorporates the recommendations of state and national entities that have been reviewing and considering workforce needs; and

(3) develop legislative proposals to begin implementation of the 10-year health care workforce development plan for consideration by the 63rd Montana Legislature.

BE IT FURTHER RESOLVED, that the study consider and that the 10-year health care workforce development plan address ways to:

(1) develop public-private partnerships to expand workforce training opportunities;

(2) expand health care workforce training opportunities through the Montana University System;

(3) expand distance-learning opportunities for persons not located near a training program;

(4) expand the number of primary care residency program training positions in Montana, in recognition of the fact that nearly 70% of medical residents practice near the location of their residency program;

(5) increase participation in multistate medical education programs, including methods to encourage Montana medical students who take part in those programs to return to Montana to practice medicine;

(6) create a loan repayment program for allied health care professionals similar to the Montana Rural Physician Incentive Program;

(7) expand training and recruitment programs for oral health professionals; and

(8) further the recommendations of the Initiative on the Future of Nursing, undertaken jointly by the Robert Wood Johnson Foundation and Institute of Medicine, to address nursing workforce issues of supply, recruitment, and retention.

BE IT FURTHER RESOLVED, that the study involve or gather input from representatives of health care provider and consumer organizations, the Montana University System, the Montana Office of Rural Health, the Montana Area Health Education Centers, the Office of Public Instruction, the Department of Labor and Industry's health care licensure boards, and other interested parties.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 18, 2011

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF WAYS TO MAKE THE MONTANA MEDICAID PROGRAM MORE COST EFFECTIVE AND EFFICIENT.

WHEREAS, the Montana Medicaid program provides essential health care services for nearly 103,000 aged, blind, disabled, or low-income Montanans as of December 2010; and

WHEREAS, the number of Montanans qualifying for the Medicaid program has increased substantially in the past 2 years; and

WHEREAS, the Medicaid program accounts for 23% of the state's total budget and 14% of general fund spending; and

WHEREAS, Medicaid spending is projected to continue increasing in the future; and

WHEREAS, the anticipated growth in Medicaid expenditures and the projected expansion of the Medicaid population in 2014 as provided for in the Patient Protection and Affordable Care Act make it imperative that public policymakers identify ways to improve the cost-effectiveness and efficiency of the Medicaid program; and

WHEREAS, the current trends in Montana's Medicaid cost growth are unsustainable in the current budget environment; and

WHEREAS, approximately 30 million individuals who are enrolled in Medicaid and the Children's Health Insurance Program are covered by capitated coordinated care programs; and

WHEREAS, 36 states currently have capitated coordinated care programs; and

WHEREAS, three additional states are planning on moving from fee-for-service Medicaid delivery systems to capitated coordinated care delivery systems; and

WHEREAS, capitated coordinated care programs have been successful in both rural as well as urban areas; and

WHEREAS, capitated coordinated care programs bring budget predictability to the state; and

WHEREAS, previous studies have shown capitated coordinated care program savings ranging from 0.5% to 20%, as well as a decline in the annual Medicaid cost trend; and

WHEREAS, capitated coordinated care programs improve health outcomes and have reduced out-of-pocket costs for Medicaid beneficiaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study Montana's Medicaid program and make recommendations on ways to improve the efficiency of the program while maintaining the quality of the services it offers.

BE IT FURTHER RESOLVED, that the study:

(1) identify the Medicaid services required under federal law and those that Montana may choose to offer, as well as the costs of providing the services;

(2) identify services or administrative activities that may be privatized and the costs or cost savings of privatizing the services or activities;

(3) identify strategies that other rural states have used to improve the cost-effectiveness of their Medicaid programs;

(4) review the effect that strategies used in other states:

(a) have had on costs, access to care, and quality of care in those states; and

(b) may have in Montana if put into effect; and

(5) review financing options for the expansion of the Medicaid program that is expected to occur under changes in federal law.

BE IT FURTHER RESOLVED, that the committee request participation in the study by the Department of Public Health and Human Services, the Montana Hospital Association, the Montana Medical Association, the Montana Health Care Association, organizations representing Medicaid recipients, members of the public, and other agencies and organizations as appropriate.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 26, 2011

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA FOR AN INTERIM STUDY ON THE EXEMPTION OF NONPROFIT CORPORATIONS OR ORGANIZATIONS FROM PROPERTY TAXES AND OTHER TAXES.

WHEREAS, the number of nonprofit corporations or organizations in Montana has continued to increase; and

WHEREAS, nonprofit corporations or organizations vary in function from some that are purely charitable and operate solely through the receipt of donations and some that function based upon receipt of fees for services or government appropriations and contracts; and

WHEREAS, under Montana law, nonprofit corporations or organizations are largely exempt from the payment of income taxes and property taxes that are paid by for-profit organizations that may provide the same or similar services; and

WHEREAS, Montana nonprofit corporations or organizations are increasingly purchasing office buildings and other real estate investments and removing them from the property tax rolls, thereby shifting the property tax burden to the small businesses and homeowners who remain on the tax rolls under the operation of section 15-10-420, MCA, that allows the local government taxing jurisdiction to levy the same dollars from fewer taxpayers; and

WHEREAS, in rural Montana counties, there is an increasing pattern of land purchases by nonprofit corporations or organizations that could result in the removal of productive agricultural lands from production, from supporting the local dominant agricultural economy, and from the tax rolls.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee or committees, pursuant to section 5-5-217, MCA, to study the following:

(1) the valuation of property in each of Montana's seven most populous counties that does not appear on the tax rolls because of the nonprofit exemption from property taxes in those counties and in each city in those counties;

(2) the amount of business equipment in each of Montana's counties that has been removed from the tax rolls because of the nonprofit exemption from property tax;

(3) the amount of tax shifting that has occurred because nonprofit corporations or organizations have acquired property that has been removed from the tax rolls;

(4) the appropriateness of allowing nonprofit corporations or organizations to acquire investment property not related to their charitable goals and to pay taxes at a reduced rate compared to for-profit investors;

(5) the effects of allowing private parks that were created to comply with subdivision standards and that are not open to the general public to be removed from the tax rolls;

(6) the impact of competition by nonprofit corporations or organizations offering essentially the same services as for-profit entities and the competitive advantage that lack of income tax and property tax provides; for example, nonprofit medical clinics owned by nonprofit hospitals compared to medical clinics owned by physicians and health clubs owned by colleges or hospitals compared to investor-owned health clubs;

(7) the impact of limiting income tax exemptions and property tax exemptions to reflect the percentage of gross receipts of the nonprofit corporation or organization that represent charitable donations compared to the percentage of fee-for-service or government appropriations or contracts;

(8) how the other 49 states treat nonprofit corporations or organizations for income tax and property tax purposes and how they differentiate from for-profit and purely charitable organizations;

(9) the nonprofit corporations or organizations that own farmland or ranchland for purposes of preserving unique historical, archaeological, or environmental resources;

(10) the effects that nonprofit land ownership has had on the local tax base and whether taxes are paid on that land and how that compares to similar land classifications in the area;

(11) legal restrictions or limitations on nonprofit land ownership in other states;

(12) whether services provided by nonprofit corporations or organizations justify the property tax exemptions and state income tax exemptions or reduced tax rates that they receive.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the studies, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

SENATE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING INTERIM MONITORING ACTIVITIES BY LEGISLATIVE ADMINISTRATIVE AND INTERIM COMMITTEES AS RECOMMENDED BY THE JOINT SUBCOMMITTEES OF THE HOUSE APPROPRIATIONS AND SENATE FINANCE AND CLAIMS STANDING COMMITTEES.

WHEREAS, appropriations power is vested in the Legislature by the Montana Constitution; and

WHEREAS, the act of appropriating funds is one of the most significant expressions of legislative policy; and

WHEREAS, the 2011 Legislature evaluated critical goals for agency operations as part of the appropriations process; and

WHEREAS, interim legislative committees are charged with program evaluation and monitoring functions for specific state agencies; and

WHEREAS, performance monitoring has the potential to communicate what is received in return for the investment of tax dollars; and

WHEREAS, through performance monitoring, both agency personnel and policymakers may gain understanding of program effectiveness instead of focusing on the preservation of existing programs and associated spending levels; and

WHEREAS, performance monitoring helps explain the results of previous legislative funding decisions and aids in priority setting; and

WHEREAS, performance monitoring helps estimate and justify the potential consequences of new funding decisions;

WHEREAS, regular performance monitoring before and during budget deliberations encourages deeper legislative understanding of agency activities and may even garner support for them; and

WHEREAS, effective performance monitoring is a partnership between the Executive, Judicial, and Legislative Branches of state government.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Finance Committee, in cooperation with the Legislative Council, be requested to recommend to appropriate administrative or interim committees, pursuant to section 5-5-217, MCA, interim monitoring activities as recommended by the Joint Subcommittees on Appropriations.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation requests interim monitoring of the Department of Public Health and Human Services in regard to the following:

(1) implementation of broad-based budget reductions and the effect on operations;

(2) implementation of Healthy Montana Kids;

(3) evaluation of the impacts of the economy and recession on workload and programs;

(4) implementation of components of federal health insurance reform including:

(a) integration of Medicaid eligibility determination in the health insurance exchange design;

(b) evaluation of the potential for a single system to determine Medicaid eligibility; and

(c) outlining components and cost of Medicaid eligibility expansion for consideration by the 2013 Legislature;

(5) within the Human and Community Services Division:

(a) implementation of the broad-based budget and personal services reductions and related effects on the division; and

(b) monitoring the caseload growth in SNAP, Medicaid, TANF, LIEAP, and child care and the number of children entering and exiting foster care; and

(6) monitoring the impact of the implementation of the components of federal health insurance reform on the Technology Services Division.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Department of Fish, Wildlife, and Parks requests followup by the Environmental Quality Council of agency goals and objectives for the:

(1) migratory bird program;

(2) upland game bird program; and

(3) brucellosis in elk study.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Department of Environmental Quality requests that the Environmental Quality Council review, on at least an annual basis, the cleanup progress at the KRY site and the progress toward petroleum tank site closures.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Judicial Branch requests that the Legislative Finance Committee monitor the Court Help Program and the Water Court.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Department of Justice requests that the Legislative Finance Committee monitor the vehicle insurance verification system and the Motor Vehicle Division.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation for interim monitoring of the Office of the Public Defender and the Department of Corrections requests monitoring of the average daily population of secure assisted living beds.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation requests interim monitoring of K-12 education and the progress on:

(1) implementing state actions to create a culture of effective data use and to improve student performance; and

(2) goals and objectives on K-12, higher education, and P-20, including the role and mission of the Education and Local Government Interim Committee, which absorbed the Joint Committee on Postsecondary Education Policy and Budget that was repealed in 1999.

BE IT FURTHER RESOLVED, that the Joint Subcommittees' recommendation requests interim monitoring of the Preservation Review Board on the status and maintenance needs of agency heritage properties if Senate Bill No. 3 is passed and approved.

BE IT FURTHER RESOLVED, that the Joint Subcommittees also discussed the following for interim monitoring:

(1) the Department of Public Health and Human Services and the department's activities in regard to:

(a) House Bills No. 130, No. 131, and No. 132 from the 2009 legislative session;

(b) children's mental health providers in the Disability Services Division;

(c) the autism waiver in the Disability Services Division;

(2) the State Auditor's Office and Insure Montana;

(3) the Department of Administration:

(a) the impact of the Patient Protection and Affordable Care Act on the state employee group plan with respect to:

(i) annual evaluation of whether to maintain grandfathered plan status;

(ii) receipt and use of early retiree reimbursements; and

(iii) constraints on benefit design and premium and cost share decisions; and

(b) efforts to reduce postage, printing, and warrant costs by encouraging vendors and state employees to use electronic funds transfers and advices;

(4) the Department of Revenue and the implementation and efficiencies gained from the scanning and imaging project; and

(5) the Department of Agriculture and the aquatic nuisance species benchmarks and report.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 20, 2011

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF A MEDICAID WAIVER FOR SERVICES PROVIDED TO CHILDREN WITH DEVELOPMENTAL DISABILITIES.

WHEREAS, providers of Medicaid-funded home and community-based services for children with developmental disabilities have operated individualized, accountable, and fiscally efficient services through a Medicaid waiver since 1985; and

WHEREAS, these services prevent the need for more restrictive and more costly out-of-home care for children with developmental disabilities; and

WHEREAS, community service providers use a model of service that includes parents and legal guardians as primary decisionmakers regarding the care and services provided to their children and that allows other stakeholders to be involved in delivering individualized, flexible services designed to meet the dynamic needs of children and families in their home and community environments; and

WHEREAS, community service providers employ professional, certified, and qualified staff members who use the latest evidenced-based intervention strategies and have received highly specialized training in early intervention techniques and in human development; and

WHEREAS, the Medicaid waiver used to provide services to children is primarily designed for adults living in 24-hour residential settings; and

WHEREAS, the model for adult services requires documentation and quality assurance measures that are time-intensive and more costly than needed for family-based services for children, resulting in significant administrative costs for those services; and

WHEREAS, the current Medicaid waiver creates an entitlement for services that requires that the needs of all individuals in the waiver program be met; and

WHEREAS, little opportunity exists for adults who are on the waiting list for the waiver program to be accepted into the program because children automatically move into the adult system when they turn 18 years of age; and

WHEREAS, the existing Medicaid waiver for services to people with developmental disabilities comes up for reauthorization in 2013, providing the state with an opportunity to develop a new waiver program for children's services that may allow for more creativity in the services provided and may be flexible enough to meet varying needs of children and families.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to review the opportunities that exist for creating a Medicaid waiver specific to services for children with developmental disabilities.

BE IT FURTHER RESOLVED, that the study examine:

(1) the ways in which a Medicaid waiver for children with developmental disabilities may allow both the state and the providers of home and community-based services to provide services more efficiently;

(2) the ways in which administrative costs may be affected by offering services through a waiver specific to children;

(3) whether a waiver for children would give the state and the providers of home and community-based services more flexibility in the delivery of services and in controlling costs; and

(4) the steps that may need to be taken if the study finds that an application for a developmental disabilities waiver for children would benefit not only the state but also the children and families served by a waiver program.

BE IT FURTHER RESOLVED, that the committee request participation in the study by the Department of Public Health and Human Services, the Office of Public Instruction, providers of home and community-based services for children, family members of children with developmental disabilities, and other interested parties as determined by the committee.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

SENATE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF PERFORMANCE-BASED FUNDING FOR K-12 EDUCATION, THE DEVELOPMENT OF A PERFORMANCE-BASED FUNDING DESIGN, AND AN IMPLEMENTATION PLAN FOR CONSIDERATION BY THE 63RD LEGISLATURE.

WHEREAS, having shared policy goals and accountability measures for K-12 education requires working for greater efficiency with improved outcomes; and

WHEREAS, the shared policy goals agreement for K-12 education calls for lower dropout rates and increased graduation percentages, among other things; and

WHEREAS, the citizens of Montana expect schools to be funded adequately and students to be well educated; and

WHEREAS, Montana taxpayers deserve the best possible return on their investment in education; and

WHEREAS, states that use performance-based funding formulas have realized improvement in student achievement.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate the Education and Local Government Interim Committee to:

(1) examine performance-based funding formulas for K-12 education used in other states;

(2) avail itself of reports and other resources available through the National Conference of State Legislatures, the Council of State Governments, and other reliable sources of information and entities involved in performance-based funding for K-12 education;

(3) consider the following elements as primary components of a performance-based funding formula for K-12 education in Montana:

(a) a retention component that would initially set aside a percentage of available funds to be distributed to a district or school when the district or school attains well-defined performance thresholds;

(b) a bonus component that would identify a portion of available funds to be used to induce and reward a district or school to meet well-defined performance goals and objectives; and

(c) a reduction component that would effectively function as a funding penalty when a district or school fails to meet or falls below well-defined performance benchmarks;

(4) design a performance-based funding formula or structure for K-12 education for use in this state that recognizes and accommodates Montana's historical commitment to local control, highly qualified educators, high student achievement, and continual improvement in education outcomes; and

(5) develop for consideration by the 63rd Legislature a plan to implement the performance-based funding formula or structure for K-12 education.

BE IT FURTHER RESOLVED, that the committee report its findings, conclusions, and recommendations, including a performance-based funding design and implementation plan, to the Governor, the Superintendent of Public Instruction, and the 63rd Legislature.

BE IT FURTHER RESOLVED, that all aspects of the study be concluded prior to September 15, 2012.

Adopted April 28, 2011

SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON RESTORATIVE JUSTICE FOR OFFENDERS; AND

REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 63RD LEGISLATURE.

WHEREAS, restorative justice is a criminal justice model that focuses on repairing the harm to all parties affected by a crime and holding offenders accountable, rather than on retribution against and punishment of the offender; and

WHEREAS, restorative justice views crime as wrongdoing against individuals and communities, rather than as a wrongdoing against the state; and

WHEREAS, restorative justice programs, such as victim-offender dialogue, mediation, and victim impact panels, encourage offender responsibility and reduced revictimization; and

WHEREAS, the state Department of Corrections has embraced restorative justice principles in programs and services for offenders and victims, including facilitated victim-offender dialogue, victim impact panels at department facilities, offender accountability letters, and centralized restitution collection; and

WHEREAS, other programs in other states and nations have shown lower recidivism rates and cost savings to state law enforcement; and

WHEREAS, the 2007 Montana Legislature passed House Bill No. 629, which enacted section 46-1-502, MCA, allowing courts to refer many types of criminal cases for mediation, potentially diverting cases from the Department of Corrections while allowing all parties to reach settlement agreements for victim restitution, community reparation, and offender treatment and programming.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to:

(1) analyze restorative justice programs in Montana and determine which programs are most effective at rehabilitating offenders and identify any weaknesses or gaps in Montana's programs;

(2) investigate restorative justice options implemented in other states and nations and identify programs that emphasize restitution and the rehabilitation of nonviolent offenders as an alternative to incarceration;

(3) gather information from national experts and explore methods of measuring the effectiveness of restorative justice programs in terms of reducing recidivism and return rates of offenders, decreasing the potential for future victimization of Montana citizens, and reducing general fund expenditures related to incarceration;

(4) develop recommendations on which programs in Montana should be retained and how restorative justice programs in Montana may be improved.

BE IT FURTHER RESOLVED, that this interim study provide ample opportunity for stakeholders in the criminal justice system, including the state Department of Corrections, the Department of Justice, the Office of the Public Defender, crime victims, victim advocates, victim service providers, and citizens at large, to participate.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF WAYS TO REDUCE CHILDHOOD HEALTH TRAUMA AND ITS LONG-TERM EFFECT ON CHILDREN.

WHEREAS, Montana's future depends in large part on the health, growth, and achievement of the state's children; and

WHEREAS, many physical, mental, and educational disabilities are preventable through prenatal care, parent education, family support, and other efforts to prevent or mitigate childhood trauma; and

WHEREAS, the human brain grows to 85% of its adult size by the time a child is 3 years of age, and this growth is profoundly shaped by the child's experiences during those years, particularly by the safety, stability, and nurturing provided by the child's primary care givers; and

WHEREAS, repeated childhood trauma, including chronic neglect, may cause significant physical changes to the brains and nervous systems of children that profoundly affect both their physical health and mental health as adults; and

WHEREAS, childhood traumatic stress can be either acute stress, such as community violence, serious accidents, the loss or sudden death of family members and friends, removal from the home, and physical or sexual assault, or it can be chronic stress, such as neglect, physical and emotional abuse, and domestic violence; and

WHEREAS, children who receive safe, stable, nurturing care generally reach appropriate developmental milestones, form secure attachments and satisfying social relationships, and develop effective coping skills and the resiliency to recover from traumatic events; and

WHEREAS, acute or chronic childhood trauma may prevent or reduce resiliency; and

WHEREAS, unaddressed childhood trauma may affect a child's experiences later in life and may lead to problems such as poor physical health, addiction, and mental illness; and

WHEREAS, nurses visit high-risk pregnant women in their homes as part of the Montana Initiative for the Abatement of Mortality in Infants, a program designed to provide the women with information they can use to improve their own health and thus the health outcomes of their newborns; and

WHEREAS, the national Nurse-Family Partnership program for low-income, first-time parents and their children has been shown to reduce traumatic events, reduce child abuse and neglect, and reduce adolescent arrests by 60% and adjudications by 90% later in the child's life; and

WHEREAS, programs that teach biological and foster parents skills for responding to traumatized children have been shown to reverse some of the symptoms of trauma in young children and to improve resiliency; and

WHEREAS, the National Native Children's Trauma Center has been working with the Institute for Educational Research to create trauma mitigation demonstration projects in schools serving the Blackfeet, Rocky Boy's, Fort Peck, Crow, Northern Cheyenne, and Flathead Reservations and Missoula county public schools in low-income neighborhoods; and

WHEREAS, the projects have trained more than 1,000 Montana clinicians and educators to recognize and respond to symptoms of trauma and have helped schools develop short-term cognitive behavioral intervention programs that help to build long-term family and peer support for children, in an effort to increase resiliency and reduce the effects of trauma.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study promising and evidence-based practices for the prevention of childhood trauma and for mitigating its effects on children.

BE IT FURTHER RESOLVED, that the study efforts include:

(1) compiling data on the prevalence of acute and chronic childhood traumatic stress;

(2) evaluating the extent and impact of current efforts in Montana to prevent childhood trauma and to mitigate its effects after it occurs;

(3) identifying promising and evidence-based practices that are most appropriate for Montana communities, particularly rural communities;

(4) identifying the communities most in need of prevention and mitigation efforts related to childhood trauma as a way to prevent physical and mental health problems, substance abuse and addiction, school failure, and involvement in the criminal justice system; and

(5) identifying any appropriate steps Montana policymakers may take to reduce childhood trauma in order to improve the mental health of Montanans.

BE IT FURTHER RESOLVED, that the study include representatives of the Department of Public Health and Human Services, the Office of Public Instruction, the mental health service area authorities and local advisory councils, groups involved in efforts to prevent childhood trauma, the Indian Health Service, Montana Indian tribes, and other interested parties as identified by the committee.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2012.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 63rd Legislature.

Adopted April 27, 2011

Senate Resolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following Senate Rules be adopted:

RULES OF THE MONTANA SENATE

CHAPTER 1

Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law is until the succeeding Legislature is organized. This rule may not be construed to mean the staff will be full-time employees during an interim.

S10-30. President, President pro tempore, and other officers. (1) The Senate shall, at the beginning of each regular session, and at other times as may be necessary, elect a Senator as President and a Senator as President pro tempore.

(2) The Senate shall choose its other officers and is the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate is the President of the Senate, who must be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the President when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during that time with all the powers of the President.

(4) The President has general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(6) The President shall approve the calendar for each legislative day.

(7) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(8) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(9) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the Senate have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for 2 or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature and wants to appoint an acting President during the President's absence, the President may do so, or the members of the Senate have the right to immediately nominate and elect an acting President of the President's caucus.

(c) An acting President of the Senate has the powers of the President and supersedes the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, has the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee has authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension, or retention of employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

S10-90. Majority Leader. The primary functions of the majority leader usually relate to floor duties. The duties of the majority leader may include but are not limited to:

(1) being the lead speaker for the majority party during floor debates;

(2) helping the President develop the calendar;

(3) assisting the President with program development, policy formation, and policy decisions;

(4) presiding over the majority caucus meetings; and

(5) other duties as assigned by the caucus.

S10-100. Majority Whip. The duties of the majority whip may include but are not limited to:

(1) assisting the majority leader;

(2) ensuring member attendance;

(3) counting votes;

(4) generally communicating the majority position; and

(5) other duties as assigned by the caucus.

S10-110. Minority Leader. The minority leader is the principal leader of the minority caucus. The duties of the minority leader may include but are not limited to:

(1) developing the minority position;

(2) negotiating with the majority party;

(3) directing minority caucus activities on the chamber floor;

(4) leading debate for the minority; and

(5) other duties as assigned by the caucus.

S10-120. Minority Whip. The major responsibilities for the minority whip may include but are not limited to:

(1) assisting the minority leader on the floor;

(2) counting votes;

(3) ensuring attendance of minority party members; and

(4) other duties as assigned by the caucus.

S10-130. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) The Secretary of the Senate shall designate a secretary to take and prepare written minutes of committee meetings for each standing committee. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) The President, majority leader, and minority leader may each appoint a private secretary.

S10-140. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-150. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform duties as required by other rules and the Senate.

S10-160. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-170. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal by the journal clerks trained by the Legislative Services Division under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide information that may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and made available.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

CHAPTER 2

Decorum

S20-10. Questions of order — appeal. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. A Senator may not speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Violation of rules — call to order — appeal. (1) If a Senator, in speaking or otherwise, violates the rules of the Senate, the President shall, or the majority leader or minority floor leader may, call the Senator to order, in which case the Senator called to order must be seated immediately.

(2) The Senator called to order may move for an appeal to the Senate, and if the motion is seconded by two Senators, the matter must be submitted to the Senate for determination by majority vote. The motion is nondebatable.

(3) If the decision of the Senate is in favor of the Senator called to order, the Senator may proceed. If the decision is against the Senator, the Senator may not proceed.

(4) If a Senator is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the Senate that the Senator be censured or be subject to other action. Censure consists of an official public reprimand of a Senator for inappropriate behavior. The Senate shall act upon the recommendation of the Committee.

S20-30. Questions of privilege — restrictions. (1) Questions of privilege in order of precedence are those:

(a) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(b) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

(2) A Senator may not address the Senate on a question of privilege between the time:

(a) an undebatable motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

S20-40. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer and, once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-50. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) registered representatives of the media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1) or (2).

S20-60. Communications to Senate. A communication to the Senate must be addressed to the President and must bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-70. Distribution of materials on floor — exception. (1) Subject to subsection (2), material may not be distributed on the Senators' desks in the chamber unless the material bears the signature of the bearer and a Senator and has been approved by the President.

(2) Subsection (1) does not apply to material written by staff at the request of a Senator and placed on the Senator's desk.

CHAPTER 3
Committees

S30-10. Committee appointments. (1) There is a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from the majority party and three from the minority party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees. Prior to making committee assignments, the Committee on Committees shall take into consideration the recommendations of the minority leader for minority committee assignments.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the majority leader and minority leader.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees — classification. (1) The standing committees of the Senate are as follows:

(a) class one committees:

(i) Business, Labor, and Economic Affairs;

(ii) Finance and Claims;

(iii) Judiciary; and

(iv) Taxation;

(b) class two committees:

(i) Education and Cultural Resources;

(ii) Local Government;

(iii) Natural Resources;

(iv) Public Health, Welfare, and Safety; and

(v) State Administration;

(c) class three committees:

(i) Agriculture, Livestock, and Irrigation;

(ii) Energy;

(iii) Fish and Game; and

(iv) Highways and Transportation; and

(d) on call committees:

(i) Ethics;

(ii) Legislative Administration; and

(iii) Rules.

(2) A class 1 committee is scheduled to meet Monday through Friday. A class 2 committee is scheduled to meet Monday, Wednesday, and Friday. A class 3 committee is scheduled to meet Tuesday and Thursday. Unless a class is prescribed for a committee, it meets upon the call of the chair.

(3) The Legislative Council shall review the workload of the standing committees to determine if any change is indicated in the class of a standing committee for the next legislative session. The Legislative Council's recommendations must be submitted to the leadership nominated or elected at the presession caucus provided for in 5-2-201.

S30-40. Ex officio members — quorum. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The majority leader and the minority leader are ex officio nonvoting members of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for:

(a) maintaining order within the committee room and its environs;

(b) scheduling hearings and executive action;

(c) supervising committee work, including the appointment of subcommittees to act on a formal or informal basis; and

(d) authenticating committee reports by signing them and submitting them promptly to the Secretary of the Senate. The chair shall sign business reports reflecting action taken in each committee meeting that enable the preparation of committee minutes. The minutes must be printed on archival paper.

(2) The Secretary of the Senate shall arrange to have the minutes copied in an electronic format. An electronic copy will be provided to the Legislative Services Division and the State Law Library of Montana. The archival paper copy must be delivered to the Montana Historical Society.

S30-60. Meetings — notice — purpose — minutes. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chair to maintain safety, order, and decorum. The date, time, and place of committee meetings must be announced.

(2) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the third legislative day;

(b) less than 10 legislative days before the transmittal deadline applicable to the subject of the hearing;

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session; or

(d) due to appropriate circumstances.

(3) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(4) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

(5) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(6) All committees meet at the call of the chair or upon the request of a majority of the members of the committee.

(7) A committee may not meet during the time the Senate is in session without leave of the President. Any Senator attending a meeting while the Senate is in session must be considered excused to attend business of the Senate subject to a call of the Senate.

(8) All meetings of committees must be recorded and the minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes; and

(f) all testimony and exhibits.

(9) If a bill is heard in a joint committee, it must be referred to a standing committee. The standing committee is not required to hold an additional hearing but shall take executive action and may report the bill to the Committee of the Whole.

(10) A bill or resolution may not be considered or become a law unless referred to a committee and returned from a committee.

(11) A bill may be rereferred at any time before its passage.

S30-70. Procedures — member privileges. (1) The chair shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not hear legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) (a) Subject to subsection (3)(b), the committee shall act on each bill in its possession:

(i) by reporting the bill out of the committee:

(A) with the recommendation that it be referred to another committee;

(B) favorably as to passage; or

(C) unfavorably; or

(ii) by tabling the measure in committee.

(b) At the written request of the sponsor, a committee may finally dispose of a bill without a hearing. Except as provided in S30-60(7), a bill may not be reported from a committee without a hearing.

(4) The committee may not report a bill to the Senate without recommendation.

(5) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all proposed changes; and

(d) a fiscal note, if required.

(6) If a measure is taken from a committee and brought to the Senate floor for debate on second reading on that day without a committee recommendation,

the bill does not include amendments formally adopted by the committee because committee amendments are merely recommendations to the Senate that are formally adopted when the committee report is accepted by the Senate.

(7) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(8) The vote of each member on all committee actions must be recorded and reported in the committee minutes. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(9) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(10) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

(11) A committee may reconsider any action as long as the matter remains in the possession of the committee. A bill is in the possession of the committee until a report on the bill is made to the Committee of the Whole. A committee member need not have voted with the prevailing side in order to move reconsideration.

(12) The chair shall decide points of order.

(13) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chair;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form.

(14) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the Senate Rules.

(15) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(16) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the Senate are applicable except as stated in the Senate Rules.

S30-80. Public testimony — decorum — time restrictions. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall register on the committee witness list.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing, subject to time constraints. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chair may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chair. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The chair shall maintain that limit.

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chair may designate the areas of the hearing room from which the equipment must be operated. Cell phone use is at the discretion of the chair.

S30-100. Pairs prohibited — absentee or proxy voting. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for absentee or proxy voting must be reflected in the committee minutes.

S30-140. Reconsideration in committee. A committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-150. Committee requested legislation. (1) (a) Except as provided in subsection (1)(b), at least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the drafting and introduction of legislation.

(b) The Finance and Claims Committee may request the drafting and introduction of legislation by a majority vote of all of the members of the committee.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee. The introduced bill must be referred to the requesting committee.

S30-160. Ethics Committee. (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee or to consider a request for a determination pursuant to subsection (4). The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate.

(4) As provided in 2-2-112, a Senator may seek a determination from the Ethics Committee concerning the possibility of a personal conflict of interest.

CHAPTER 4

Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the

Legislative Services Division and signed by a Senator as chief sponsor. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may be used for any purpose specified in Joint Rule 40-60; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments; or

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction — first reading. (1) Upon receiving a bill or resolution from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation. Legislation properly introduced or received in the Senate must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a Senator may question adherence to rules. Acknowledgment by the Secretary of the Senate of receipt of legislation transmitted from the House commences the time limit for consideration of the legislation. All legislation received by the Senate may be referred to a committee prior to being read across the rostrum.

(2) Bills and resolutions preintroduced as provided in Joint Rule 40-40 may be assigned to committee and printed prior to the legislative session. The Legislative Services Division is responsible for ensuring the preintroduction intent from each Senator and presenting the preintroduced legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

(4) The sponsor may ask the Legislative Services Division to change or correct a short title used on the bill status system.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Every bill must be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) A bill or resolution may not have more than one reading on the same day except the last legislative day.

(3) An amendment may not be offered on third reading.

S40-60. Scheduling for second reading. (1) All bills and resolutions that have been reported by a committee or withdrawn from a committee by motion, accepted by the Senate, and reproduced must be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole unless a printed version of an unamended bill is available.

(3) The majority leader shall arrange legislation on the agenda in the order in which the bills will be considered, unless otherwise ordered by the Senate or Committee of the Whole.

CHAPTER 5
Floor Action

S50-10. Attendance — mandatory voting — quorum. (1) Unless excused, Senators must be present at every sitting of the Senate and shall vote on questions put before the Senate.

(2) A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in the manner and under penalties as the Senate may prescribe (Montana Constitution, Art. V, sec. 10(2)).

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. A Senator may not speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it must be restated by the presiding officer. If requested by the presiding officer or a Senator, it must be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions may be made:

(a) to adjourn (nondebatable S50-60);

(b) for a call of the Senate (nondebatable S50-60);

(c) to recess (nondebatable S50-60);

(d) question of privilege;

(e) to lay on the table (nondebatable S50-60);

(f) for the previous question (nondebatable S50-60);

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again except upon a motion of reconsideration as provided in S50-90.

(4) A motion or proposition on a subject different from that under consideration may not be accepted unless a substitute motion is in order.

S50-60. Nondebatable motions. The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to change a vote (S50-200);

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions — restrictions. (1) Subject to subsection (2), no more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

(2) A motion for a call of the Senate, for the previous question, to table, or to take from the table may not be amended.

S50-80. Previous question. (1) Except as provided in subsection (2), the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise. The motion for the previous question is nondebatable as provided in S50-60(7).

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour,

one-half of that time to be given to the proponents and one-half to the opponents. The sponsor of the main motion on which the previous question is adopted may close on the motion regardless of whether debate on the main motion has occurred.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration — time restrictions. (1) Subject to subsection (6), any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought. However, an inquiry may be made concerning the purpose of the motion to reconsider.

(2) A motion to reconsider must be disposed of when made unless a proper substitute motion is made and adopted.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and must be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there may not be further action until the succeeding legislative day.

(6) If the Senate has adjourned for more than 2 days, then a motion to reconsider action taken on the last day the Senate was in session is in order on the day the Senate reconvenes or on the following legislative day.

S50-100. Dividing a question — segregation excluded. A Senator may request to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain. A vote is not required on a request to divide a question, but the chair may rule that a question is not divisible. The ruling of the chair may be appealed as provided in S20-10 and S20-20. For an appeal of a ruling of the presiding officer, the question for the Senate must be stated as, "Shall the ruling of the chair be upheld?". A motion to segregate pursuant to S50-140(4) is not a request to divide a question.

S50-110. Rules for questions or bills requiring other than a majority vote. (1) Except as provided in subsection (2), a question or bill requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question or bill prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote. This rule does not prevent a committee from indefinitely postponing or tabling a bill proposing an amendment to the Montana Constitution.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill must again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S50-120. Committee reports to Senate — reconsideration. (1) Reports of standing committees must be read on Order of Business No. 2, and, subject to subsection (4), debate may not be had on any report.

(2) On an adverse committee report, the sponsor may respond to the chair of the committee making the report.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider as provided in S50-90. Any Senator may make the reconsideration motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary. Subject to S50-90(6), the reconsideration motion must be made within 1 legislative day of the adoption of the committee report and is not in order if the bill has been considered in Committee of the Whole.

(4) (a) Subject to subsection (4)(b), the Rules Committee and conference committees may report at any time, except during a call of the Senate, when a vote is being taken, or during Committee of the Whole.

(b) The Rules Committee may report during Committee of the Whole on matters referred to the Committee by the Committee of the Whole.

S50-130. Conference committee — reports. (1) When a conference committee report is filed with the Secretary of the Senate, the report must be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

(2) If both the Senate and the House of Representatives adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the Senate, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the Senate rejects a conference committee report, the committee continues to exist unless dissolved by the President or by motion. The committee may file a subsequent report.

(4) A Senate conference committee may confer regarding matters assigned to it with any House conference committee with like jurisdiction and submit recommendations for consideration of the Senate.

S50-140. Second reading — Committee of the Whole report — segregation — rejection. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole must be read by a summary of its title. The sponsor shall make an opening statement, proposed amendments must be considered, and then the bill must be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation remains on second reading.

S50-150. Committee of the Whole amendments. (1) All Committee of the Whole amendments must be prepared by the staff of the Legislative Services Division, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, must be printed in the journal, along with the name of the sponsor and the vote on each.

S50-160. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable unless specified in S50-60.

(2) The only motions in order during Committee of the Whole are to:

(a) recommend passage or nonpassage;

(b) recommend concurrence or nonconcurrence (House amendments to Senate legislation);

(c) amend;

(d) indefinitely postpone;

(e) pass consideration;

(f) change the order in which legislation is placed on the agenda (nondebatable S50-60(14));

(g) rise (nondebatable S50-60(3));

(h) rise and report progress and ask leave to sit again (nondebatable S50-60(3)); or

(i) rise and report (nondebatable S50-60(3)).

(3) The motions listed in subsection (2) may be made in descending order as listed.

S50-170. Committee of the Whole — generally. (1) The Committee of the Whole may not appoint subcommittees.

(2) The Committee of the Whole may not punish its members for misconduct, but may report disorder to the Senate.

S50-180. Voting on second reading — positive disposition of motions. (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as voting on the prevailing side. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

S50-190. Third reading procedure. (1) Unless rereferred to a committee by a majority vote after the adoption of the Committee of the Whole report but before moving to another order of business, all legislation passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-200. Senate voting — changing a vote — objection. (1) A roll call vote must be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators must be called alphabetically, unless an electronic voting system is used. A Senator may not vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

(3) A Senator may move to change the Senator's vote, on any recorded vote, within 1 legislative day of the vote. The Senator making the motion shall first specify the bill number, the date of the vote, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation. The motion is nondebatable. If none of the Senators present object, the change must be entered into the journal.

(4) If any Senator objects to the request in subsection (3), the Senator making the request may move to suspend the rules to allow the Senator to change the Senator's vote.

(5) An error caused by a malfunction of the voting system may be corrected without a vote within 10 minutes of the malfunction.

S50-210. Pairs — Committee of the Whole restriction. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it binds the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-220. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of the Senators present direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator may not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business must be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote of the members present.

S50-230. House amendments to Senate legislation. (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate

legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

S50-240. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the Senate shall announce the amendments under Order of Business No. 4.

(2) The Senate may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the Senate and the House of Representatives accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the Senate shall place the final form of the legislation on third reading to determine if the required vote is obtained.

S50-250. Governor's veto. (1) When the Governor returns a bill with a veto, the Senate shall announce the veto under Order of Business No. 4.

(2) On any legislative day, a Senator may move to override the Governor's veto by a two-thirds vote under Order of Business No. 6.

CHAPTER 6

Rules

S60-10. Senate rules — amendment — adoption — suspension. (1) A motion to amend or adopt a rule of the Senate must be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (2000) governs the proceedings of the Senate in all cases not covered by these rules.

CHAPTER 7

Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any office subject to Senate confirmation, the Governor shall appoint some fit person to discharge the duties of the office until the next meeting of the Senate, when the Governor shall nominate a person to fill the office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor must be:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee. The President of the Senate may refer any individual nomination contained in a list received from the Governor to any standing committee.

(2) The procedure in subsection (1) constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process — preliminary reports — separate consideration. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include the nominee submitted to the committee or a group of nominees, the group of nominees being specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been given.

(2) Following the hearings for a group of nominees, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees. A preliminary standing committee report is not required for a resolution for a single nominee pursuant to subsection (5).

(3) (a) If a Senator wishes to have an individual nominee or group of nominees considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator shall request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report must include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator or when a single nomination has been submitted to a committee, the committee chair shall submit a bill draft request on behalf of the committee for a simple resolution to include only the single or separated nominee. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, an additional hearing is not required to be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) After the report has been read, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum pursuant to S50-220(2) (five Senators);

(2) a motion to lift a call of the Senate pursuant to S50-220(4) (two-thirds of the members present);

(3) a motion to amend or suspend rules pursuant to S60-10 (two-thirds);

(4) a motion to override the Governor's veto pursuant to S50-250 and Article VI, section 10(3), of the Montana Constitution (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund pursuant to Article IX, section 5, of the Montana Constitution (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than those described in that section (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution pursuant to Article XIV, section 8, of the Montana Constitution (two-thirds of the entire Legislature);

(8) an appeal of the ruling of the presiding officer pursuant to S20-10 (one Senator, seconded by two other Senators);

(9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds);

(10) a motion to approve a bill to appropriate the principal of the tobacco settlement trust fund pursuant to Article XII, section 4, of the Montana Constitution (two-thirds); and

(11) a motion to appropriate the principal of the noxious weed management trust fund pursuant to Article IX, section 6, of the Montana Constitution (three-fourths).

Adopted January 10, 2011

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE OF THE HONORABLE C. BRUCE LOBLE AS CHIEF WATER JUDGE OF THE STATE OF MONTANA.

WHEREAS, Chief Justice Mike McGrath of the Montana Supreme Court made the appointment, below designated, pursuant to an Order of the Court, dated June 24, 2009; and

WHEREAS, the appointment has been submitted to the Senate, to wit:

C. Bruce Loble as Chief Water Judge of the State of Montana, to serve a 4-year term commencing July 1, 2009, and ending June 30, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted February 2, 2011

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE STATE TAX APPEAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Ms. Samantha Sanchez, Helena, Montana, appointed to serve a term ending January 1, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 1, 2011

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, AND FEBRUARY 16, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Jim Schillinger, Baker, Montana, for a term ending April 18, 2013.

(2) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Linda Nielsen, Nashua, Montana, for a term ending March 1, 2017.

Ed Waldner, Chester, Montana, for a term ending March 1, 2017.

Jeffrey S. Lewis, Corvallis, Montana, for a term ending March 1, 2017.

(3) As members of the Livestock Loss Reduction and Mitigation Board, in accordance with section 2-15-3110, MCA:

Elaine Allestad, Big Timber, Montana, for a term ending January 1, 2015.

Larry Trexler, Hamilton, Montana, for a term ending January 1, 2015.

John Herman, Hot Springs, Montana, for a term ending January 1, 2015.

(4) As members of the Milk Control Board, in accordance with section 2-15-3105, MCA:

Jerrold A. Weissman, Great Falls, Montana, for a term ending January 1, 2015.

W. Scott Mitchell, Billings, Montana, for a term ending January 1, 2015.

(5) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1742, MCA:

Bruce Sorensen, Belgrade, Montana, for a term ending July 31, 2014.

Joan Marshall, Ekalaka, Montana, for a term ending July 31, 2015.

Kim K. Baker, Hot Springs, Montana, for a term ending July 31, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2011

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Ralph Lenhart, Glendive, Montana, appointed to serve a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 7, 2011

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, AND MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Architects and Landscape Architects, in accordance with section 2-15-1761, MCA:

Carl Thuesen, Billings, Montana, for a term ending March 27, 2013;

Shelly Engler, Bozeman, Montana, for a term ending March 27, 2013;

Maire O'Neill, Bozeman, Montana, for a term ending March 27, 2013;

Janet A. Cornish, Butte, Montana, for a term ending March 27, 2013.

(2) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Alexander C. Edwards, Billings, Montana, for a term ending January 1, 2015;

Fred Lark, Lewistown, Montana, for a term ending January 1, 2015;

Robert Buckles, Bozeman, Montana, for a term ending January 1, 2015;

Charles Manning, Lakeside, Montana, for a term ending January 1, 2015.

(3) As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Mark Kuipers, Missoula, Montana, for a term ending February 1, 2015;

Rob Quist, Kalispell, Montana, for a term ending February 1, 2015;

Youpa Stein, Arlee, Montana, for a term ending February 1, 2015;

Wilbur Wood, Roundup, Montana, for a term ending February 1, 2015;

Jean Steele, Hamilton, Montana, for a term ending February 1, 2015.

(4) As members of the Board of Barbers and Cosmetologists, in accordance with section 2-15-1747, MCA:

Sherry Dembowski-Wieckowski, Thompson Falls, Montana, for a term ending October 1, 2013;

Corie Mora, Great Falls, Montana, for a term ending October 1, 2015;

Sara Dobbins, Helena, Montana, for a term ending October 1, 2015.

(5) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Randi Hood, Butte, Montana, for a term ending January 1, 2015;

Laura Obert, Townsend, Montana, for a term ending January 1, 2013;

Brenda Desmond, Missoula, Montana, for a term ending January 1, 2015;

Angela Russell, Lodge Grass, Montana, for a term ending January 1, 2015;

Lois Menzies, Helena, Montana, for a term ending January 1, 2015;

Godfrey Saunders, Bozeman, Montana, for a term ending January 1, 2015;

Richard Kirn, Poplar, Montana, for a term ending January 1, 2015;

Mike Ferriter, Helena, Montana, for a term ending January 1, 2015;

Sherry Matteucci, Billings, Montana, for a term ending January 1, 2015.

(6) As a member of the Board of Funeral Service, in accordance with section 2-15-1743, MCA:

Thomas Meeks, Great Falls, Montana, for a term ending July 1, 2015.

(7) As members of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Thomas Nygard, Bozeman, Montana, for a term ending July 1, 2016;

Crystal Wong Shors, Helena, Montana, for a term ending July 1, 2016;

James W. Murry, Clancy, Montana, for a term ending July 1, 2015;

John G. Lepley, Fort Benton, Montana, for a term ending July 1, 2015;

Shirley Groff, Butte, Montana, for a term ending July 1, 2015;

Bob Brown, Whitefish, Montana, for a term ending July 1, 2016.

(8) As members of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Susan Austin, Kalispell, Montana, for a term ending January 20, 2013;

Charles (Al) Carruthers, Butte, Montana, for a term ending January 20, 2013;

Shawn Real Bird, Hardin, Montana, for a term ending January 20, 2013;

Ray "Topper" Tracy, Stevensville, Montana, for a term ending January 20, 2013;

Susan Egbert, Helena, Montana, for a term ending January 20, 2014.

(9) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Darryl Dupuis, Polson, Montana, for a term ending January 1, 2014;

Margaret Hall-Bowman, Pablo, Montana, for a term ending January 1, 2014.

(10) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Steve Johnson, Missoula, Montana, for a term ending January 1, 2015;

Jerry Rukavina, Great Falls, Montana, for a term ending January 1, 2015;

David Gallik, Helena, Montana, for a term ending January 1, 2015;

Amy Verlanic, Anaconda, Montana, for a term ending January 1, 2015.

(11) As members of the Board of Private Security, in accordance with section 2-15-1781, MCA:

Daniel Taylor, Glasgow, Montana, for a term ending August 1, 2012;

Leo C. Dutton, Helena, Montana, for a term ending August 1, 2012;

Scott Swingley, Helena, Montana, for a term ending August 1, 2012;

Ronald Young, Joliet, Montana, for a term ending August 1, 2012;

Mark Chaput, Billings, Montana, for a term ending August 1, 2013.

(12) As members of the Board of Professional Engineers and Land Surveyors, in accordance with section 2-15-1763, MCA:

Ruhul Amin, Bozeman, Montana, for a term ending July 1, 2011;

David Elias, Anaconda, Montana, for a term ending July 1, 2014;

Hal Jacobson, Helena, Montana, for a term ending July 1, 2014;

Ronald Drake, Helena, Montana, for a term ending July 1, 2014;

Ingrid Clare Lovitt-Abramson, Missoula, Montana, for a term ending July 1, 2011.

(13) As members of the Public Employees' Retirement Board, in accordance with section 2-15-1009, MCA:

Scott Moore, Miles City, Montana, for a term ending April 1, 2015;

Timm Twardoski, Helena, Montana, for a term ending April 1, 2016.

(14) As members of the Public Safety Officer Standards and Training Council, in accordance with section 44-4-402, MCA:

Harold F. Hanser, Billings, Montana, for a term ending January 1, 2013;

John Schaffer, Great Falls, Montana, for a term ending January 1, 2015;

Lewis Matthews, Wolf Point, Montana, for a term ending January 1, 2015;

Georgette Hogan Boggio, Hardin, Montana, for a term ending January 1, 2015;

Winnie Ore, Helena, Montana, for a term ending January 1, 2015;

Mike Anderson, Helena, Montana, for a term ending January 1, 2015;

James Smith, Libby, Montana, for a term ending January 1, 2015.

(15) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Keith Heavyrunner, Browning, Montana, for a term ending August 1, 2013;

Harry LaFriniere, Florence, Montana, for a term ending August 1, 2014;

Mary Creech, Butte, Montana, for a term ending August 1, 2014;

Sylvia Beals, Forsyth, Montana, for a term ending August 1, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 11, 2011

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE HARD-ROCK MINING IMPACT BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Ms. Marianne Roose, Eureka, Montana, appointed to a term ending January 1, 2015.

Ms. Donna von Nieda, Nye, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE AIR POLLUTION CONTROL ADVISORY COUNCIL MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the of the Air Pollution Control Advisory Council, in accordance with section 2-15-2106, MCA:

Mr. John Lei, Lame Deer, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Dyrck Van Hyning, Great Falls, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Edward Madler, Whitefish, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. Larry Anderson, Great Falls, Montana, appointed to a term ending January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. Joseph Russell, Kalispell, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. Larry Mires, Glasgow, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 12

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Ms. Heidi Kaiser, Park City, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 6, 2011

SENATE RESOLUTION NO. 13

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF PUBLIC EDUCATION AND THE BOARD OF REGENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, AND FEBRUARY 16, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Erin Williams, Missoula, Montana, for a term ending February 1, 2017.

Doug Cordier, Columbia Falls, Montana, for a term ending February 1, 2013.

Lila Taylor, Busby, Montana, for a term ending February 1, 2018.

(2) As members of the Board of Regents, in accordance with section 2-15-1508, MCA:

Angela McLean, Anaconda, Montana, for a term ending February 1, 2017.

Teresa Borrenpohl, Bozeman, Montana, for a term ending June 30, 2011.

Major Robinson, Billings, Montana, for a term ending February 1, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 7, 2011

SENATE RESOLUTION NO. 14

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment to the Fish, Wildlife, and Parks Commission, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Dan Vermillion, Livingston, Montana, for a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 28, 2011

SENATE RESOLUTION NO. 15

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE FISH, WILDLIFE, AND PARKS COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment to the Fish, Wildlife, and Parks Commission, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

A.T. "Rusty" Stafne, Wolf Point, Montana, for a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 26, 2011

SENATE RESOLUTION NO. 16

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE MONTANA FACILITY FINANCE AUTHORITY, THE BOARD OF HOUSING, THE HUMAN RIGHTS COMMISSION, THE BOARD OF INVESTMENTS, THE BOARD OF LABOR APPEALS, THE RESEARCH AND COMMERCIALIZATION TECHNOLOGY BOARD, AND THE STATE COMPENSATION INSURANCE FUND BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, AND MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Montana Facility Finance Authority, in accordance with section 2-15-1815, MCA:

Joe Quilici, Butte, Montana, for a term ending January 1, 2015.

Kimberly Rickard, Helena, Montana, for a term ending January 1, 2015.

Matthew B. Thiel, Missoula, Montana, for a term ending January 1, 2015.

(2) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Sheila Rice, Great Falls, Montana, for a term ending January 1, 2015.

Jeanette McKee, Hamilton, Montana, for a term ending January 1, 2015.

Bob Gauthier, Ronan, Montana, for a term ending January 1, 2015.

(3) As members of the Human Rights Commission, in accordance with section 2-15-1706, MCA:

Cynthia Wolken, Missoula, Montana, for a term ending January 1, 2015.

Lucy Simpson, Helena, Montana, for a term ending January 1, 2015.

(4) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Karl Englund, Missoula, Montana, for a term ending January 1, 2015.

Jon Satre, Helena, Montana, for a term ending January 1, 2015.

Gary Buchanan, Billings, Montana, for a term ending January 1, 2015.

Quinton Nyman, Helena, Montana, for a term ending January 1, 2015.

(5) As members of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

JP Pomnichowski, Bozeman, Montana, for a term ending January 1, 2015.

Ed Logan, Billings, Montana, as the alternate member, for a term ending January 1, 2013.

(6) As a member of the Research and Commercialization Technology Board, in accordance with section 2-15-1819, MCA:

Jim Davison, Anaconda, Montana, for a term ending July 1, 2011.

(7) As members of the State Compensation Insurance Fund Board, in accordance with section 2-15-1019, MCA:

Joe Brenneman, Kalispell, Montana, for a term ending April 28, 2015.

Wayne Dykstra, Billings, Montana, for a term ending April 28, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2011

SENATE RESOLUTION NO. 17

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE STATE ELECTRICAL BOARD, THE BOARD OF PLUMBERS, THE BOARD OF PUBLIC ACCOUNTANTS, THE BOARD OF REAL ESTATE APPRAISERS, AND THE BOARD OF REALTY REGULATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, FEBRUARY 16, 2011, AND MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the State Electrical Board, in accordance with section 2-15-1764, MCA:

Mel Medhus III, Kalispell, Montana, for a term ending July 1, 2015.

Keith Simendinger, Helena, Montana, for a term ending July 1, 2012.

(2) As members of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Olaf Stimac, Great Falls, Montana, for a term ending May 4, 2014.

Timothy E. Regan, Miles City, Montana, for a term ending May 4, 2014.

(3) As members of the Board of Public Accountants, in accordance with section 2-15-1756, MCA:

Michael Johns, Deer Lodge, Montana, for a term ending July 1, 2014.

Tony Ennenga, Kalispell, Montana, for a term ending July 1, 2014.

Kathy VanDyke, Bozeman, Montana, for a term ending July 1, 2014.

(4) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1758, MCA:

Jeffrey Fleming, Huntley, Montana, for a term ending May 1, 2013.

Dennis Hoeger, Bozeman, Montana, for a term ending May 1, 2013.

Jennifer McGinnis, Polson, Montana, for a term ending May 1, 2013.

Todd Schmidt, Kalispell, Montana, for a term ending May 1, 2014.

Anzarina Moore, Great Falls, Montana, for a term ending May 1, 2014.

(5) As a member of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Stephen Hess, Butte, Montana, for a term ending May 9, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 2011

SENATE RESOLUTION NO. 18

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT MADE TO THE STATE COMPENSATION INSURANCE FUND BOARD BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As the chair of the State Compensation Insurance Fund Board, in accordance with section 2-15-1019, MCA:

Elizabeth Best, Great Falls, Montana, for a term ending April 28, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 26, 2011

SENATE RESOLUTION NO. 19

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE DIRECTOR OF THE DEPARTMENT OF COMMERCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Commerce, in accordance with sections 2-15-111 and 2-15-1801, MCA:

Mr. Dore Schwinden, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 7, 2011

SENATE RESOLUTION NO. 20

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE TRANSPORTATION COMMISSION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Transportation Commission, in accordance with section 2-15-2502, MCA:

S. Kevin Howlett, Arlee, Montana, for a term ending January 1, 2015.

Carol Lambert, Broadus, Montana, for a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2011

SENATE RESOLUTION NO. 21

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Coal Board, in accordance with section 2-15-1821, MCA:

Ms. Marcia Brown, Butte, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 11, 2011

SENATE RESOLUTION NO. 22

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE COAL BOARD MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Loren Acton, Bozeman, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 11, 2011

SENATE RESOLUTION NO. 23

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF OIL AND GAS CONSERVATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. Ronald S. Efta, Wibaux, Montana, appointed to a term ending January 1, 2015.

Mr. Bret Smelser, Sidney, Montana, appointed to a term ending January 1, 2015.

Mr. Jack King, Billings, Montana, appointed to a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 2011

SENATE RESOLUTION NO. 24

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE BOARD OF COUNTY PRINTING, THE BOARD OF HORSERACING, AND THE BOARD OF PARDONS AND PAROLE MADE BY THE GOVERNOR AND SUBMITTED IN WRITTEN COMMUNICATION DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of County Printing, in accordance with section 2-15-1026, MCA:

Dan Killoy, Miles City, Montana, for a term ending April 1, 2013.

Calvin J. Oraw, Sidney, Montana, for a term ending April 1, 2013.

Marianne Roose, Eureka, Montana, for a term ending April 1, 2013.

Milton Wester, Laurel, Montana, for a term ending April 1, 2013.

Laura Obert, Townsend, Montana, for a term ending April 1, 2013.

(2) As a member of the Board of Horseracing, in accordance with section 2-15-3106, MCA:

Cody Drew, Circle, Montana, for a term ending January 20, 2012.

(3) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Michael E. McKee, Hamilton, Montana, for a term ending January 1, 2015.

John Rex, Miles City, Montana, for a term ending January 1, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2011

SENATE RESOLUTION NO. 25

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS MADE BY THE GOVERNOR AND SUBMITTED BY

WRITTEN COMMUNICATION DATED FEBRUARY 16, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Architects and Landscape Architects, in accordance with section 2-15-1761, MCA:

Bayliss Ward, Bozeman, Montana, for a term ending March 27, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2011

SENATE RESOLUTION NO. 26

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS TO THE STATE BANKING BOARD, THE BOARD OF PLUMBERS, AND THE BOARD OF REALTY REGULATION MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, AND MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the State Banking Board, in accordance with section 2-15-1025, MCA:

Maureen Fleming, Missoula, Montana, for a term ending July 1, 2011.

Jon Redlin, Lambert, Montana, for a term ending July 1, 2012.

Mark E. Noennig, Billings, Montana, for a term ending July 1, 2012.

Evelyn Casterline, Vida, Montana, for a term ending July 1, 2012.

Kenneth M. Walsh, Twin Bridges, Montana, for a term ending July 1, 2012.

(2) As members of the Board of Plumbers, in accordance with section 2-15-1765, MCA:

Debi Friede, Havre, Montana, for a term ending May 4, 2015.

Denver Fraser, Clancy, Montana, for a term ending May 4, 2015.

Scott Lemert, Livingston, Montana, for a term ending May 4, 2015.

Steve Carey, Frenchtown, Montana, for a term ending May 4, 2015.

David Lindeen, Helena, Montana, for a term ending May 4, 2015.

(3) As members of the Board of Realty Regulation, in accordance with section 2-15-1757, MCA:

Larry Milless, Stevensville, Montana, for a term ending May 9, 2015.

Connie Wardell, Billings, Montana, for a term ending May 9, 2015.

Shirley McDermott, Laurel, Montana, for a term ending May 9, 2015.

C.E. “Abe” Abramson, Missoula, Montana, for a term ending May 9, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2011

SENATE RESOLUTION NO. 27

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT TO THE BOARD OF HAIL INSURANCE MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Gary Gollehon, Brady, Montana, for a term ending April 18, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 11, 2011

SENATE RESOLUTION NO. 28

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING THE PRESIDENT OF THE UNITED STATES, THE DEPARTMENT OF DEFENSE, AND CONGRESS TO RECONSIDER THE PROPOSED RELOCATION OF THE F-15C/D MISSION OUT OF GREAT FALLS, MONTANA, CONDUCT AN IMPROVED ANALYSIS BASED ON ACTUAL DATA INSTEAD OF ASSUMPTIONS, AND RECONSIDER THE TOTAL CONTRIBUTIONS OF MONTANA AND BENEFITS TO THIS COUNTRY OF RETAINING THE F-15C/D MISSION IN MONTANA.

WHEREAS, since the activation in 1947 of the Montana Air National Guard, Montanans have flown this nation's premier fighter aircraft from the P-51 to the F-86, F-89, F-102, F-106, F-16, and F-15; and

WHEREAS, in Fiscal Year 2010, the Montana Air National Guard had payroll of $41,248,479, which supported 1,050 drill-status airmen and soldiers of which 340 members were full-time employees; and

WHEREAS, the Montana Air National Guard has received numerous national awards, including the Air Force Outstanding Unit Award eight times, the Spaatz Trophy, the Hughes Trophy, and the William Tell Award; and

WHEREAS, the Great Falls community is the only community in the nation to be awarded the Fisher Award from the Department of Defense recognizing humanitarian support of the U.S. military; and

WHEREAS, the Montana Air National Guard has honorably served this country with overseas missions four times in the past decade and is currently serving an ALERT mission in Hawaii; and

WHEREAS, the Montana Air National Guard's reenlistment rate is at 94% as compared with the national average of 86%; and

WHEREAS, Great Falls International Airport, which is home to the Montana Air National Guard, has completed environmental impact studies for aircraft noise mitigation and, using taxpayer money, is currently providing noise mitigation to surrounding homes that offsets noise levels of the F-15 and next-generation tactical fighter aircraft; and

WHEREAS, Great Falls International Airport lacks encroachment issues and in times of emergency could use the currently inactive Malmstrom Air Force Base runway for aircraft recovery by reactivating the runway using the Federal Aviation Administration Military Airplane Program funding, upon approval by the Air Force; and

WHEREAS, the Great Falls International Airport Authority currently leases space to the Montana Air National Guard at the airport for a fee of $1.00 a year in exchange for the Montana Air National Guard providing all firefighting services to the airport, which includes making available more than $3 million in firefighting equipment and $2 million in firefighters' annual payroll; and

WHEREAS, 3 years ago the Montana Air National Guard was tasked with conversion from F-16 aircraft to F-15 aircraft and completed the total conversion at a cost to the taxpayers of nearly $80 million, including construction of a new Corrosion Control Facility, a new Operations Facility, additional space for munitions storage, and engine shop expansion. Added to that was pilot training at a cost to the public of $55 million and maintenance training at a cost of $3 million. The total F-16 to F-15 conversion was accomplished with savings to the taxpayers of more than $2 million, with operational status achieved 1 year ahead of schedule; and

WHEREAS, the 7,000 square miles provided by the Hays Military Operations Area in northcentral Montana offers a virtually unencumbered airspace unique in its capacity to provide full-spectrum joint, combined, and integrated combat arms military training free of encroachment, electronic warfare constraints, and other restrictions that are present at other areas in the continental United States. This "National Treasure" airspace is particularly well-suited for future Air Superiority Mission training, particularly for next-generation tactical fighter aircraft that require significant airspace for their "Supercruise" capability; and

WHEREAS, Montana in the past has lost military missions and assets with significant impacts to this state's finances and jobs, including the base closure at Glasgow, which resulted in the loss of 16,000 residents; and

WHEREAS, funding to maintain the F-15C/D mission in Great Falls is to end in Fiscal Year 2012, with notification already sent by the Secretary of the Air Force and the federal government that the F-15C/D mission is to be relocated from Great Falls, Montana, to Fresno, California; and

WHEREAS, the decision to relocate was based on an Air Force cost analysis that contains questionable information and analysis and should be reconsidered based on presentation of actual data and accurate analysis.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Montana Senate questions the assumptions made and the accuracy of the analysis used in making the decision to relocate the F-15C/D mission out of Great Falls to Fresno, California, and requests a reconsideration of the decision based on further analysis and documentation regarding what truly is in the best interest of Montana and federal taxpayers. The following should be included in the documentation:

(1) alert status impacts using three aircraft rather than the five aircraft used in the previous business case analysis;

(2) inclusion of the costs of pilot training for Fresno pilots converting to F-15 aircraft;

(3) inclusion of the costs for backfilling alert missions during the conversion from F-16 to F-15 missions in Fresno;

(4) exclusion of costs already incurred in Great Falls for MILCOM (military communications) improvements;

(5) inclusion of the costs of an upcoming 18-month environmental impact study that must be conducted in the Fresno area because of a change in mission;

(6) inclusion of the cost of noise mitigation efforts and activities that will need to be undertaken in Fresno related to F-15 noise issues, including the costs of buying and demolishing homes that already have undergone taxpayer-funded noise mitigation for past missions but that now stand in what are considered unacceptable noise contours for the F-15;

(7) inclusion of the costs of replacing VORTAC and TACAN systems in Fresno; and

(8) inclusion of the costs to fix clear-zone requirements for munitions in Fresno. The current munitions facilities have active commercial taxiways in the explosive potential areas, and resolving this issue may add considerable costs.

BE IT FURTHER RESOLVED, that the Montana Senate ask the President of the United States, the Secretary of Defense, and the Secretary of the Air Force to stay the decision to relocate the F-15C/D mission to Fresno while a federal investigation is underway regarding a limited number of pilots and commanders within the Fresno Air National Guard and completely reconsider the decision if convictions are obtained based on the investigation.

BE IT FURTHER RESOLVED, that the Montana Senate protests the projected loss of 200 jobs of drill-status members of the National Guard, which is a projected result of a conversion from the F-15 to a C-27J Spartan aircraft mission. The loss of jobs includes the loss of 75 to 100 full-time National Guard employees, which means a loss of $9 million to the National Guard payroll a year, not including or considering the loss of spouse or other family member employment in Montana. The financial loss also has a ripple effect on lost revenues from medical payments and economic activities. Further, incorporation of the new C-27J mission is estimated at $15 million, including a new corrosion control facility and a nose dock to be added to the large hangar building in Great Falls. In addition, pilot training costs of $20 million and maintenance training costs of $3 million will be charged to taxpayers. While the new rugged military airlift platform can be configured for troop, medevac, or cargo transport, the C-27J aircraft has no firefighting or fire suppression capability.

BE IT FURTHER RESOLVED, that the Montana Senate requests reconsideration of the decision made by the Secretary of the Air Force that

included expenditures of $80 million to convert the Air National Guard in Great Falls to the F-15C/D mission but now transfers that mission to Fresno, California, with an additional expenditure of $40 million projected in Montana to convert and modify these same new facilities for the C-27J mission and a projected need for much greater expenditures to convert and modify F-16 facilities and training for the F-15C/D mission in California. The Montana Senate further protests the loss of taxpayer dollars spent over the last 3 years on a fighter mission that is to be relocated, particularly during weak economic times, with reduced Department of Defense budgets.

BE IT FURTHER RESOLVED, that the Montana Senate considers the loss of jobs, loss of local and state revenues, plus the associated diminution of taxes related to loss of the F-15C/D mission, even with the addition of the C-27J mission, to be catastrophic to the economy in Cascade County and to all Montanans.

BE IT FURTHER RESOLVED, that the Montana Senate recognizes the rich and honorable tradition in Montana of piloting fighter aircraft in defense of our great nation and that Air Force modernization of the F-15C/D aircraft with Active Electronically Scanned Array radars and new efficient and more powerful engines is likely to allow the F-15C/D aircraft to operate safely and effectively through at least 2025, as determined by full-scale fatigue testing.

BE IT FURTHER RESOLVED, that the national treasure of the Hays Military Operations Area, which supports unencumbered aircraft use, is at risk of being lost if the F-15C/D mission is moved from the State of Montana.

BE IT FURTHER RESOLVED, that the Montana Senate considers Montana to be a growth area for Unmanned Aircraft System technology, flight, evaluation, and testing as well as an ideal training ground for unmanned aircraft systems and aircraft mitigation and defense training and that Montana's growing unmanned aircraft system industry, if used in conjunction with a retained F-15C/D mission and ground-based radar in Montana, could be key to addressing threats to the airspace and national safety of the United States posed by unmanned aircraft systems.

BE IT FURTHER RESOLVED, that the Montana Senate is concerned about possible reductions in firefighting services or equipment at the Great Falls International Airport provided by the Montana Air National Guard in exchange for a $1.00 lease, a service that has been of great value to citizens that fly commercial aircraft into Montana.

BE IT FURTHER RESOLVED, that the Montana Senate considers issues of encroachment and munitions safety to be nonproblems in Montana but still unresolved in California.

BE IT FURTHER RESOLVED, that the Montana Senate protests the appearance of a penalty against the Montana Air National Guard and the State of Montana when a fighter mission is transferred out of Montana, after numerous awards, a transition from the F-16 to F-15 fighters under cost and ahead of schedule, intense community support, unmatched reenlistment success and employee retention, and great and effective leadership at the local and state levels, to Fresno where portions of the Air National Guard are under an investigative cloud for fiscal improprieties.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to President of the United States Barack Obama, Secretary Robert Gates at the Department of Defense, Senate Majority Leader Harry Reid, Speaker of the House of Representatives John Boehner, Montana's Congressional Delegation, and the Governor, urging them to do all within their

authority to retain the F-15C/D mission at the Montana Air National Guard 120th Fighter Wing as a measure of fiscal responsibility and safety for the people of Montana and the United States today and into the future.

Adopted April 11, 2011

SENATE RESOLUTION NO. 29

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 12, 2011, JANUARY 31, 2011, FEBRUARY 16, 2011, MARCH 17, 2011, AND MARCH 30, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Alternative Health Care Board, in accordance with section 2-15-1730, MCA:

Molly Danison, Missoula, MT, for a term ending September 1, 2013;

Mary Anne Brown, Great Falls, MT, for a term ending September 1, 2014;

Thomas Mensing, Red Lodge, MT, for a term ending September 1, 2014.

(2) As members of the Board of Chiropractors, in accordance with section 2-15-1737, MCA:

Cathleen Fellows, Billings, MT, for a term ending January 1, 2013;

Scott Hansing, Helena, MT, for a term ending January 1, 2014.

(3) As a member of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1753, MCA:

Alison Mizner, Kalispell, MT, for a term ending April 16, 2013.

(4) As members of the Board of Dentistry, in accordance with section 2-15-1732, MCA:

George Johnston, Dillon, MT, for a term ending March 29, 2015;

Terry Klise, Missoula, MT, for a term ending March 29, 2016;

Luella Vogel, Great Falls, MT, for a term ending March 29, 2016.

(5) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1740, MCA:

Gene W. Bukowski, Billings, MT, for a term ending July 1, 2013;

Rebecca Wisnoskie, Helena, MT, for a term ending July 1, 2012.

(6) As members of the Board of Massage Therapy, in accordance with section 2-15-1782, MCA:

Michael Eayrs, Kalispell, MT, for a term ending May 6, 2011;

Stacy J. Baird, East Helena, MT, for a term ending May 6, 2012;

Deborah Kimmet, Missoula, MT, for a term ending May 6, 2013;

Nick Soloway, Helena, MT, for a term ending May 6, 2013;

Grace D. Bowman, Billings, MT, for a term ending May 6, 2013.

(7) As members of the Board of Medical Examiners in accordance with section 2-15-1731, MCA:

Carole Erickson, Missoula, MT, for a term ending September 1, 2013;

Dwight Thompson, Harlowton, MT, for a term ending September 1, 2013;

Pat Bollinger, Helena, MT, for a term ending September 1, 2013;

Ryan Burke, Great Falls, MT, for a term ending September 1, 2013;

Kris Spanjian, Billings, MT, for a term ending September 1, 2013;

Eileen Sheehy, Billings, MT, for a term ending September 1, 2013;

Anna Earl, Chester, MT, for a term ending September 1, 2014;

Nathan Thomas, Missoula, MT, for a term ending September 1, 2014;

Bruce Hayward, McAllister, MT, for a term ending September 1, 2014.

(8) As members of the Board of Nursing in accordance with section 2-15-1734, MCA:

N. Gregory Kohn, Billings, MT, for a term ending July 1, 2014;

Barbara Lundemo, Sidney, MT, for a term ending July 1, 2013;

Lanette Perkins, Missoula, MT, for a term ending July 1, 2014;

Kathleen Sprattler, Billings, MT, for a term ending July 1, 2014;

Brenda Schye, Fort Peck, MT, for a term ending July 1, 2014.

(9) As members of the Board of Nursing Home Administrators in accordance with section 2-15-1735, MCA:

Kathryn Beaty, Hamilton, MT, for a term ending May 28, 2015;

Ken Chase, Billings, MT, for a term ending May 28, 2016.

(10) As members of the Board of Occupational Therapy Practice in accordance with section 2-15-1749, MCA:

Cindy Stergar, Butte, MT, for a term ending December 31, 2014;

Nate Naprstek, Bozeman, MT, for a term ending December 31, 2014.

(11) As members of the Board of Pharmacy in accordance with section 2-15-1733, MCA:

Rebecca Deschamps, Missoula, MT, for a term ending July 1, 2014;

Lee Ann Bradley, Missoula, MT, for a term ending July 1, 2015.

(12) As members of the Board of Physical Therapy Examiners in accordance with section 2-15-1748, MCA:

Christian Appel, Bozeman, MT, for a term ending July 1, 2012;

Robin Peterson Smith, Billings, MT, for a term ending July 1, 2013.

(13) As members of the Board of Psychologists in accordance with section 2-15-1741, MCA:

George Watson, Bozeman, MT, for a term ending September 1, 2014;

Stuart Hall, Missoula, MT, for a term ending September 1, 2014;

Bonnie Hyatt-Murphy, Livingston, MT, for a term ending September 1, 2015.

(14) As a member of the Board of Public Assistance in accordance with section 2-15-2203, MCA:

Helen Barta Schmitt, Sidney, MT, for a term ending January 1, 2015.

(15) As members of the Board of Radiologic Technologists in accordance with section 2-15-1738, MCA:

Sharlett Dale, Harlowton, MT, for a term ending July 1, 2012;

Mike Nielsen, Billings, MT, for a term ending July 1, 2013;

Jesse Cole, Butte, MT, for a term ending July 1, 2014;

Charles McCubbins, Shelby, MT, for a term ending July 1, 2014;

Anna L. Hazen, Fort Benton, MT, for a term ending July 1, 2014;

Sharon Dinstel, Colstrip, MT, for a term ending July 1, 2014.

(16) As members of the Board of Respiratory Care Practitioners in accordance with section 2-15-1750, MCA:

Thomas Fallang, Butte, MT, for a term ending January 1, 2015;

Rusty Davies, Billings, MT, for a term ending January 1, 2013.

(17) As members of the Board of Sanitarians in accordance with section 2-15-1751, MCA:

Susan K. Brueggeman, Polson, MT, for a term ending July 1, 2011;

James Zabrocki, Miles City, MT, for a term ending July 1, 2013.

(18) As members of the Board of Social Work Examiners and Professional Counselors in accordance with section 2-15-1744, MCA:

Peter Degel, Helena, MT, for a term ending January 1, 2015;

Rosemary Hertel, Deer Lodge, MT, for a term ending January 1, 2015;

Beverley McCurry, Columbus, MT, for a term ending January 1, 2015.

(19) As members of the Board of Speech-Language Pathologists and Audiologists in accordance with section 2-15-1739, MCA:

Cheri Fjare, Big Timber, MT, for a term ending December 31, 2013;

Alida Wright, Columbia Falls, MT, for a term ending December 31, 2013;

Beverly Stiller, Lame Deer, MT, for a term ending December 31, 2013.

(20) As members of the Board of Optometry in accordance with section 2-15-1736, MCA:

Douglas Kimball, Bozeman, MT, for a term ending April 3, 2015;

Peter Fontana, Great Falls, MT, for a term ending April 3, 2015.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointments and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 2011

SENATE RESOLUTION NO. 30

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE APPOINTMENT OF THE HONORABLE DANIEL A. BOUCHER AS DISTRICT JUDGE OF THE TWELFTH JUDICIAL DISTRICT OF THE STATE OF MONTANA MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 2011, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 3-1-1011, MCA:

As District Judge of the Twelfth Judicial District of the state of Montana, Daniel A. Boucher, Havre, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 62nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above appointment and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 12, 2011

SENATE RESOLUTION NO. 31

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING THE CODE OF THE WEST AS THE MODEL CODE OF CONDUCT IN THE STATE OF MONTANA.

WHEREAS, the men and women who came to Montana during the westward expansion of the United States, including cowboys, ranchers, pioneers, miners, and peace officers and their families, lived by an unwritten code of conduct; and

WHEREAS, this unwritten code of conduct was built upon the principles of honesty, loyalty, hard work, and courage; and

WHEREAS, those who lived by this unwritten code of conduct valued personal integrity, self-reliance, and accountability; and

WHEREAS, these early residents also recognized that cooperation and fair dealing were necessary to their survival and success; and

WHEREAS, this unwritten code of conduct became known as the Code of the West; and

WHEREAS, author James P. Owen distilled the Code of the West into 10 principles to live by; and

WHEREAS, Montanans can derive wisdom and guidance from the Code of the West, which remains relevant to present and future generations of Montanans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the State of Montana adopts the Code of the West, as derived from the book Cowboy Ethics: What Wall Street Can Learn from the Code of the West by James P. Owen and summarized as follows, as the model code of conduct for the State of Montana:

(1) Live each day with courage.

(2) Take pride in your work.

(3) Always finish what you start.

(4) Do what has to be done.

(5) Be tough, but fair.

(6) When you make a promise, keep it.

(7) Ride for the brand.

(8) Talk less and say more.

(9) Remember that some things aren't for sale.

(10) Know where to draw the line.

Adopted April 13, 2011

2010 BALLOT ISSUES

Approved by Voters in the
November 2010 General Election

CONSTITUTIONAL INITIATIVE NO. 105

A CONSTITUTIONAL AMENDMENT
PROPOSED BY INITIATIVE PETITION

There is no existing state or local tax on transactions that sell or transfer real property in Montana. CI-105 amends the Montana Constitution to prohibit state or local governments from imposing any new tax on transactions that sell or transfer real property, such as residential homes, apartments, condominiums, townhouses, farms, ranches, land, and commercial property, after January 1, 2010.

☐ FOR amending the Montana Constitution to prohibit state or local governments from imposing any new tax on transactions that sell or transfer real property.

☐ AGAINST amending the Montana Constitution to prohibit state or local governments from imposing any new tax on transactions that sell or transfer real property.

The complete text of CI-105 follows:

Be it enacted by the People of the State of Montana:

NEW SECTION. **Section 1.** Article VIII of The Constitution of the state of Montana is amended by adding a new section 17 that reads:

Section 17. Prohibition on real property transfer taxes. The state or any local government unit may not impose any tax, including a sales tax, on the sale or transfer of real property.

NEW SECTION. **Section 2. Retroactive Applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to the sale or transfer of real property beginning after January 1, 2010.

NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 4. Effective date.** [This act] is effective upon approval by the electorate.

Constitutional Initiative No. 105 was approved by the following vote at the General Election held November 2, 2010:

For:	259,621
Against:	97,891

INITIATIVE NO. 161

A LAW PROPOSED BY INITIATIVE PETITION

I-161 revises the laws related to nonresident big game and deer hunting licenses. It abolishes outfitter-sponsored nonresident big game and deer combination licenses, replacing the 5,500 outfitter-sponsored big game licenses with 5,500 additional general nonresident big game licenses. It also increases the nonresident big game combination license fee from $628 to $897 and the nonresident deer combination license fee from $328 to $527. It provides for future adjustments of these fees for inflation. The initiative allocates a share of the proceeds from these nonresident hunting license fees to provide hunting access and preserve and restore habitat.

I-161 increases state revenues over the next four years by an estimated $700,000 annually for hunting access and an estimated $1.5 million annually for habitat preservation and restoration, assuming that all nonresident hunting licenses are sold. It also increases general nonresident hunting license revenues by inflation.

☐ FOR abolishing outfitter-sponsored hunting licenses, replacing outfitter-sponsored big game licenses with nonresident licenses, increasing nonresident license fees, and increasing funding for hunting access and habitat.

☐ AGAINST abolishing outfitter-sponsored hunting licenses, replacing outfitter-sponsored big game licenses with nonresident licenses, increasing nonresident license fees, and increasing funding for hunting access and habitat.

The complete text of I-161 follows:

Be it enacted by the People of the State of Montana:

Section 1. Section 87-1-242, MCA, is amended to read:

"**87-1-242. Funding for wildlife habitat.** (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature:

(a) Class B-10, nonresident combination, $77;

(b) Nonresident antelope, $20;

(c) Nonresident moose, $20;

(d) Nonresident mountain goat, $20;

(e) Nonresident mountain sheep, $20;

(f) Class D-1, nonresident mountain lion, $20;

(g) Nonresident black bear, $20;

(h) Nonresident wild turkey, $10;

(i) Class AAA, combination sports, $7;

(j) Class B-11 nonresident deer combination, $200.

(2) Twenty percent of any increase in the fee for the Class B-7 license or any license or permit listed in subsection (1)~~, except outfitter-sponsored Class B-10 and Class B-11 licenses subject to variable pricing under 87-1-268,~~ must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income from the money, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) Twenty percent of the money allocated by this section must be used as follows:

(a) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat; and

(b) the remainder and any money not allocated for development and maintenance under subsection (4)(a) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed for the development and maintenance of real property used for wildlife habitat."

Section 2. Section 87-1-266, MCA, is amended to read:

"**87-1-266. Hunter management program — benefits for providing hunting access — nonresident landowner limitation — restriction on landowner liability.** (1) As provided in 87-1-265, the department may establish a voluntary hunter management program to provide tangible benefits to private landowners enrolled in the block management program who grant access to their land for public hunting. The decision to enroll a landowner in the hunter management program is the responsibility of the department. Benefits may be granted as provided in this section and by rule.

(2) As a benefit for enrolling property in the hunter management program, a resident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class AAA combination sports license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale.

(3) As a benefit for enrolling property in the hunter management program, a nonresident landowner who becomes a cooperator in the program and who agrees to provide public hunting access may receive one Class B-10 nonresident big game combination license, without charge, if the landowner is the owner of record. The license may be used for the full hunting or fishing season in any district where it is valid. The license may not be transferred by gift or sale. The grant of a license under this subsection also qualifies the licensee to apply for a permit through the normal drawing process. The grant of a license under this subsection does not affect the limits established under ~~87-1-268 and~~ 87-2-505.

(4) (a) Instead of receiving the benefits provided in subsection (2) or (3), a landowner of record who becomes a cooperator in the hunter management program and who agrees to provide public hunting access may designate an immediate family member to receive a Class AAA combination sports license, without charge, if the family member is a resident or a Class B-10 nonresident big game combination license, without charge, if the family member is a nonresident. An employee rather than a family member may be designated to receive a license.

(b) For purposes of this subsection (4), an immediate family member means a parent, grandparent, child, or grandchild of the cooperator by blood or marriage, a spouse, a legally adopted child, a sibling of the cooperator or spouse, or a niece or nephew.

(c) For purposes of this subsection (4), the term "employee" means a person who works full time and year-round for the landowner as part of an active farm or ranch operation.

(d) An immediate family member or employee who is designated to receive a license pursuant to this subsection (4) must be eligible for licensure under current Montana law and may not transfer the license by gift or sale.

(e) The grant of a Class B-10 nonresident big game combination license to an immediate family member pursuant to this subsection (4) does not affect the limits established in ~~87-1-268 and~~ 87-2-505.

(5) Any landowner who is enrolled in the block management program may receive the benefits provided under the hunter management program, as outlined in this section, and the benefits provided under the hunting access enhancement program, as outlined in 87-1-267.

(6) The restriction on liability of a landowner, agent, or tenant that is provided under 70-16-302(1) applies to a landowner who participates in the hunter management program."

Section 3. Section 87-1-601, MCA, is amended to read:

"**87-1-601. Use of fish and game money.** (1) (a) Except as provided in [section 9] and subsections (7) and (9) of this section, all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, or from appropriations or received by the department from any other state source must be turned over to the department of revenue and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) Except as provided in 87-2-411, the money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in Title 87 means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the department of revenue and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) (a) Except as provided in section 2(3), Chapter 560, Laws of 2005, money must be deposited in an account in the permanent fund if it is received by the department from:

(i) the sale of surplus real property;

(ii) exploration or development of oil, gas, or mineral deposits from lands acquired by the department, except royalties or other compensation based on production; and

(iii) leases of interests in department real property not contemplated at the time of acquisition.

(b) The interest derived from the account, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or

money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited in the state general fund.

(8) The department of revenue shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102.

(9) (a) The department shall deposit all money received from the search and rescue surcharge in 87-2-202 in a state special revenue account to the credit of the department for search and rescue purposes as provided for in 10-3-801.

(b) Upon certification by the department of reimbursement requests submitted by the department of military affairs for search and rescue missions involving persons engaged in hunting, fishing, or trapping, the department may transfer funds from the special revenue account to the search and rescue account provided for in 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(c) Using funds in the department's search and rescue account that are not already committed to reimbursement for search and rescue missions, the department may provide matching funds to the department of military affairs to reimburse counties for search and rescue training and equipment costs up to the proportion that the number of search and rescue missions involving persons engaged in hunting, fishing, or trapping bears to the statewide total of search and rescue missions.

(d) Any money deposited in the special revenue account is available for reimbursement of search and rescue missions and to provide matching funds to reimburse counties for search and rescue training and equipment costs."

Section 4. Section 87-2-202, MCA, is amended to read:

"**87-2-202. (Temporary) Application — fee — expiration.** (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [last four digits of the applicant's social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license or to receive a free wildlife conservation license pursuant to 87-2-803(12). It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, ~~except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268,~~ an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Terminates April 24, 2010, pursuant to sec. 5, Ch. 237, L. 2007, unless contingency occurs. Bracketed language in subsection (1) concerning social security number, subsection (5), and bracketed language in subsection (6) terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001. The $2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

87-2-202. (Effective April 25, 2010, pursuant to Ch. 237, L. 2007, unless contingency occurs) Application — fee — expiration. (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [social security number,] occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, a tribal identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license or to

receive a free wildlife conservation license pursuant to 87-2-803(12). It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $10, of which 25 cents is a search and rescue surcharge.

(c) In addition to the fee in subsection (3)(a), the first time in any license year that a resident uses the wildlife conservation license as a prerequisite to purchase a hunting license, an additional hunting access enhancement fee of $2 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The resident hunting access enhancement fee is chargeable only once during any license year.

(d) In addition to the fee in subsection (3)(b), the first time in any license year that a nonresident uses the wildlife conservation license as a prerequisite to purchase a hunting license, ~~except a variably priced outfitter-sponsored Class B-10 or Class B-11 license issued under 87-1-268,~~ an additional hunting access enhancement fee of $10 is assessed. The additional fee may be used by the department only to encourage enhanced hunting access through the hunter management and hunting access enhancement programs established in 87-1-265 through 87-1-267. The wildlife conservation license must be marked appropriately when the hunting access enhancement fee is paid. The nonresident hunting access enhancement fee is chargeable only once during any license year.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

[(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(6) The department shall delete the applicant's social security number in any electronic database [5 years after the date that application is made for the most recent license]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001. The $2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)"

Section 5. Section 87-2-505, MCA, is amended to read:

"**87-2-505. Class B-10—nonresident big game combination license.** (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of the fee of ~~$628~~ $897 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d) ~~or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to~~

~~87-2-511 for applicants indicating their intent to use the services of a licensed outfitter~~ and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a B-10 nonresident big game combination license that entitles a holder who is 12 years of age or older to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202.

(b) Not more than ~~11,500 unreserved~~ 17,000 Class B-10 licenses may be sold in any 1 license year.

(c) Of the fee paid for the purchase of a Class B-10 nonresident big game combination license pursuant to subsection (1)(a), 25% must be deposited in the account established in [section 9].

(d) The cost of the Class B-10 nonresident big game combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U).

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission."

Section 6. Section 87-2-510, MCA, is amended to read:

"**87-2-510. Class B-11—nonresident deer combination license.** (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued may, upon payment of a fee of ~~$328~~ $527 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d)~~, upon payment of the fee established as provided in 87-1-268 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter or upon payment of the fee of $328 plus the nonresident hunting access enhancement fee in 87-2-202(3)(d), if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor~~ and subject to the limitations prescribed by law and department regulation, apply to the fish, wildlife, and parks office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles a holder who is 12 years of age or older to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(b) Of the fee paid for the purchase of a Class B-11 nonresident deer combination license pursuant to subsection (1)(a), 25% must be deposited in the account established in [section 9].

(c) The cost of the Class B-11 nonresident deer combination license must be adjusted annually based on any change to the consumer price index from the previous year. The consumer price index to be used for calculations is the consumer price index for all urban consumers (CPI-U).

(2) Not more than ~~2,300~~ 4,600 unreserved Class B-11 licenses may be sold in any 1 license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission."

Section 7. Section 87-2-511, MCA, is amended to read:

"**87-2-511. Sale and use of Class B-10, Class B-11, and Class B-13 licenses.** (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, ~~with a number of authorized Class B-10 and Class B-11 licenses, as determined under 87-1-268, reserved for applicants using the services of a licensed outfitter~~ and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than 15 certificates of sponsorship in any license year.

~~(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:~~

~~(a) accompany the applicant;~~

~~(b) provide guiding services for the species hunted by the applicant;~~

~~(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;~~

~~(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and~~

~~(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.~~

~~(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.~~

~~(6)~~(4) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

~~(7) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.~~

~~(8) The department shall make the reserved outfitter-sponsored Class B-10 and Class B-11 licenses that remain unsold available as provided in 87-1-268.~~

~~(9)~~(5) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing among all applicants for the respective unreserved licenses.

~~(10)~~(6) The department shall offer the Class B-13 nonresident youth big game combination license for sale on March 1. An applicant shall provide the name and automated licensing system number of the adult immediate family member who will accompany the youth. The adult sponsor must possess either a valid Class B-10 or Class B-11 license or a valid resident deer or elk tag at the time of application."

Section 8. Section 87-2-512, MCA, is amended to read:

"**87-2-512. Separation of Class B-7 license from Class B-10 license for deer management purposes — disposition of license revenue.** (1) The commission may by rule separate the Class B-7 license from the Class B-10 license and sell the separated Class B-7 license, giving a preference to any Class B-10 license holder to purchase one of the separated Class B-7 licenses. In the case of separated Class B-7 licenses that are not purchased by Class B-10 license holders, the commission, for purposes of sound deer management:

(a) may authorize the sale of not more than 5,000 Class B-7 licenses that have been separated from the Class B-10 licenses, as limited by 87-2-504;

(b) may authorize all or a portion of the separated Class B-7 licenses to be sold as Class B-11 combination licenses;

(c) shall set the fees for the separated licenses as follows:

(i) the fee for a Class B-10 license without the deer tag may not be more than the fee set in 87-2-505 for licenses in the general category ~~and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268~~; and

(ii) the fee for the separated Class B-11 licenses may not be more than the fees specified in 87-2-510 for licenses in the general and landowner-sponsored categories ~~and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268~~;

(d) may assign the separated Class B-7 or Class B-11 licenses for use in specific administrative regions, portions of administrative regions, hunting districts, or portions of hunting districts;

(e) may allocate a portion of the separated Class B-7 or Class B-11 licenses among the general and landowner-sponsored categories established in 87-2-510 and 87-2-511 but not count those licenses as part of the statutory quotas, with the Class B-7 licenses then subject to the requirements and procedures of 87-2-511;

~~(f) may allocate a portion of the separated Class B-7 or Class B-11 licenses to the outfitter-sponsored category subject to the requirements and procedures of 87-2-511, except that licenses in the outfitter-sponsored category may not comprise more than one-third of the licenses issued pursuant to this section and the number issued, when added to the number of Class B-11 licenses issued under 87-1-268, may not exceed 2,300 in any license year;~~ and

~~(g)~~(f) may condition the separated Class B-7 and Class B-11 licenses as appropriate and necessary to manage the harvest of deer, including restricting the use of a license to either mule deer or whitetail deer.

(2) The revenue from any Class B-11 licenses that have been separated from Class B-10 licenses must be deposited in the state special revenue account to the credit of the department and not allocated pursuant to other statutory requirements generally applicable to Class B-11 licenses. The revenue from Class B-10 licenses sold without a deer tag must be allocated in the same manner as revenue from Class B-10 licenses sold with a deer tag."

NEW SECTION. **Section 9. Hunting access account.** (1) There is a hunting access account in the state special revenue fund. Funds deposited in this account may be used only for the purpose of funding any hunting access program established by law or by the department through administrative rule.

(2) The following funds must be deposited in the account:

(a) 25% of the fee for Class B-10 nonresident big game combination licenses pursuant to 87-2-505(1)(c) and 25% of the fee for Class B-11 nonresident deer combination licenses pursuant to 87-2-510(1)(b);

(b) 25% of the fee for hunting licenses issued to nonresident children of a resident pursuant to 87-2-514; and

(c) the hunting access enhancement fees assessed pursuant to 87-2-202(3)(c) and (3)(d).

(3) Any interest or income earned on the account must be deposited in the account.

NEW SECTION. **Section 10. Repealer.** Section 87-1-268, MCA, is repealed.

NEW SECTION. **Section 11. Codification instruction.** [Section 9] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 9].

NEW SECTION. **Section 12. Effective date.** [This act] is effective March 1, 2011.

Initiative No. 161 was approved by the following vote at the General Election held November 2, 2010:

For:	187,870
Against:	161,201

INITIATIVE NO. 164

A LAW PROPOSED BY INITIATIVE PETITION

Under Montana law, deferred deposit (payday) lenders may charge fees equaling one-fourth of the loan, which, as an annual interest rate could range from 300 percent to 650 percent. Title lenders may charge similar interest rates. I-164 reduces the interest, fees, and charges that payday lenders, title lenders, retail installment lenders, and consumer loan licensees may charge to an annual interest rate of 36 percent. It prohibits businesses from structuring other transactions to avoid the rate limit. It also revises statutes applicable to pawn brokers and junk dealers.

I-164 reduces the licenses and examination fee revenue paid to the State because certain lenders may not renew their licenses.

☐ FOR reducing the annual interest, fees, and charges payday, title, and retail installment lenders and consumer loan licensees may charge on loans to 36 percent.

☐ AGAINST reducing the annual interest, fees, and charges payday, title, and retail installment lenders and consumer loan licensees may charge on loans to 36 percent.

The complete text of I-164 follows:

Be it enacted by the People of the State of Montana:

NEW SECTION. **Section 1. Findings.** The people of Montana find that some lenders are charging Montanans over 400% interest annually, that excessive interest rates can lead Montana families into a debt trap of repeat borrowing, that the United States congress has enacted laws capping interest rates on loans to military families at 36% annually, and that responsible small loans are available at interest rates of 36% annually or less.

Section 2. Section 31-1-112, MCA, is amended to read:

"**31-1-112. Interest rate limitation exemption — regulated lenders — merchant finance.** (1) A regulated lender, except for a deferred deposit loan licensee, title loan licensee, or consumer loan licensee, is exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect of all usury statutes.

(2) A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits."

Section 3. Section 31-1-203, MCA, is amended to read:

"**31-1-203. Penalties.** (1) Any person who knowingly violates a provision of this part or engages in the business of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 31-1-231 through 31-1-243, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance, delinquency, or collection charge on the contract. In addition to other penalties provided by law, a violation of subsection (3) and a contract made in violation of the finance charge limitations imposed by 31-1-241 is a violation of title 30, chapter 14, part 1.

(3) A person may not engage in any device or subterfuge intended to evade the requirements of this chapter including assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making loans disguised as

personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services."

Section 4. Section 31-1-241, MCA, is amended to read:

"**31-1-241. Finance charge limitation.** (1) ~~Notwithstanding the provisions of any other law, the~~ The finance charge included in a retail installment contract must be at a rate agreed upon by the retail seller and the buyer, but the finance charge may not exceed 36% per annum.

(2) ~~Notwithstanding the provisions of any other law, the~~ The finance charge included in a retail charge account agreement must be at a rate agreed upon by the retail seller and the buyer, but the finance charge may not exceed 36% per annum.

(3) The finance charge must be computed from month to month (which need not be a calendar month) or over another regular billing cycle period by using either:

(a) the average daily balance in the account in the billing cycle period; or

(b) the ending balance of the account as of the last day of the billing cycle period less the amount of total purchases charged to the account during that billing cycle.

(4) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the billing cycle prior to the effective date of the change.

(5) If the retail seller increases the finance charge on a retail charge account agreement, then the increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(6) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(7) If the finance charge determined pursuant to subsection (3) for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for the period."

Section 5. Section 31-1-401, MCA, is amended to read:

"**31-1-401. Interest pawnbrokers may receive — civil enforcement — prohibited activities.** (1) A person may not carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above 10% a year without first obtaining a license. A pawnbroker or junk dealer or the pawnbroker's or junk dealer's employees or agents may not charge a fee of more than 25% of the amount of the loan for a 30-day period. The fee for extending a pawn agreement for 30 days may not exceed 25% of the amount of the loan. For purposes of this section, a fee includes all costs or fees charged, including but not limited to interest, commission, discount, storage, care of property, and purchase option.

(2) The taking, receiving, reserving, or charging of a fee greater than that allowed under subsection (1) is considered a forfeiture of a sum double the amount of the fee for storage or caring that was agreed to be paid.

(3) (a) When a rate or charge greater than that provided for in subsection (1) has been paid, the person by whom it has been paid may recover from the pawnbroker or junk dealer reasonable attorney fees and an amount double the amount of the fee paid.

(b) An action under this ~~section~~ subsection (3) must be brought within 2 years after the payment of the fee. Before a suit may be brought, the party bringing suit shall make written demand for return of the fee paid.

(4) Unless licensed as a consumer loan licensee, deferred deposit loan licensee, or title loan licensee, a pawnbroker or junk dealer may not;

(a) cash or advance money for a postdated or deferred presentment check in exchange for a fee or finance charge;

(b) use a check, authorization for electronic access, or other method of access to a deposit account, savings account, or other financial or asset account as a condition of or security for an extension of credit;

(c) receive the title to a motor vehicle for the purpose of a pawn transaction or in pledge for a loan; or

(d) engage in any device or subterfuge intended to evade the requirements of this chapter including assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making loans disguised as personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services.

(5) In addition to other penalties provided by law, a violation of subsection (4) is a violation of title 30, chapter 14, part 1."

Section 6. Section 31-1-722, MCA, is amended to read:

"**31-1-722. Prohibited and permitted fees — attorney fees and costs.** (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for ~~each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.~~ making or carrying each deferred deposit loan authorized by this part that exceeds 36% per annum, exclusive of the insufficient funds fees authorized in subsections (3) and (4).

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed $30. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due may not collect damages under 27-1-717(3) for an insufficient funds check.

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed $30. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due may not collect damages under 27-1-717(3) for an electronic deduction for which there are insufficient funds.

(5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is

rendered in any action on a deferred deposit loan entered into pursuant to this part."

Section 7. Section 31-1-817, MCA, is amended to read:

"**31-1-817. Interest rates — fees charged.** (1) The maximum rate of interest ~~that a title lender may contract for and receive~~ for making and carrying any title loan authorized by this part may not exceed~~:~~ 36% per annum exclusive of the recording costs and service charges provided for in subsections (2) and (3).

~~(a) 25% for each 30-day period for the portion of a loan that does not exceed $2,000;~~

~~(b) 18% for each 30-day period for the portion of a loan exceeding $2,000 but not exceeding $4,000; and~~

~~(c) 10% for each 30-day period, plus fees, on the portion of a loan that exceeds $4,000.~~

(2) Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

(3) Title lenders may charge a service charge, as provided in 27-1-717, if there are insufficient funds to pay a check on the date of presentment. Title lenders may not collect damages under 27-1-717(3) based upon the presentment of an insufficient funds check."

Section 8. Section 32-5-301, MCA, is amended to read:

"**32-5-301. Fees charged to consumers.** (1) A licensee may contract for and receive~~,~~ interest on any loan of money~~, interest as provided under 31-1-112~~. Such interest, including fees and charges incurred in the making of the loan but excluding the fees authorized in subsections (2) and (3), may not exceed 36% per annum.

(2) If provided for in the contract, an additional fee may be charged for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement. The fee charged may be the greater of $15 or 5% of the amount past due, not to exceed $50. The fee charged for any past-due amount may be charged only once. Except as provided in subsection (3), other fees may not be charged for default or extension of the contract by the borrower.

(3) (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period during which an installment is not scheduled to be paid by reason of the deferral.

(b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of $15 or 5% of the amount currently due, not to exceed $50.

(c) Other fees may not be charged by the lender for any deferrals granted by the lender.

(4) The licensee may include in the principal amount of any loan:
(a) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan;

(b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan;

(c) bona fide fees or charges related to real estate security paid to third parties;

(d) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(e) fees for preparation of a deed, settlement statement, or other documents;

(f) fees for notarizing deeds and other documents;

(g) appraisal fees;

(h) fees for credit reports; and

(i) fees paid to a trustee for release of a trust deed.

(5) (a) Other fees may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining fees in excess of those authorized by this chapter. If any amount in excess of the fees permitted by this chapter is charged, contracted for, or received, the licensee shall forfeit to the borrower a sum that is double the amount that is in excess of the fees authorized by this chapter.

(b) This section does not apply to fees for services rendered in connection with a loan after the loan has been consummated and if the borrower's participation in the services is strictly voluntary."

NEW SECTION. **Section 9. Effective Date.** [This act] applies to all transactions governed hereby entered into on or after January 1, 2011.

Initiative No. 164 was approved by the following vote at the General Election held November 2, 2010:

For:	253,475
Against:	99,749

TABLES

Code Sections Affected
Session Laws Affected
Senate Bill to Chapter Number
House Bill to Chapter Number
Chapter Number to Bill Number
Effective Dates by Chapter Number
Effective Dates by Date
Session Law to Code
2010 Ballot Issues to Code

CODE SECTIONS AFFECTED

This table was compiled before the codification process was completed. It does not reflect certain sections affected by name change amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(a)(ii).

Title-Chapter-Section	Action	Chapter	Bill Number
1-1-203	amended	Ch. 238	SB 337
1-1-215	amended	Ch. 211	HB 288
1-1-230	enacted	Ch. 89	HB 255
1-1-525	amended	Ch. 165	HB 528
1-6-105	enacted	Ch. 238	SB 337
2-1-501	enacted	Ch. 402	SB 125
2-2-121	amended	Ch. 386	SB 338
2-2-136	amended	Ch. 386	SB 338
2-3-212	amended	Ch. 65	HB 120
2-3-301	amended	Ch. 41	SB 53
2-4-110	amended	Ch. 99	HB 70
2-4-302	amended	Ch. 41	SB 53
	amended	Ch. 53	HB 23
2-4-307	amended	Ch. 333	HB 543
2-6-110	amended	Ch. 206	HB 103
2-6-203	amended	Ch. 170	HB 66
2-6-208	formerly 2-15-1013	Ch. 170	HB 66
2-7-503	amended	Ch. 289	SB 420
2-7-506	amended	Ch. 146	HB 41
2-7-517	amended	Ch. 289	SB 420
2-9-211	amended	Ch. 350	SB 331
2-10-111	enacted	Ch. 286	SB 347
2-10-112	enacted	Ch. 286	SB 347
2-15-155	enacted	Ch. 236	SB 120
2-15-1009	amended	Ch. 99	HB 70
2-15-1013	amended and renumbered 2-6-208	Ch. 170	HB 66
2-15-1017	repealed	Ch. 148	HB 77
2-15-1019	amended	Ch. 63	HB 118
2-15-1028	amended	Ch. 344	SB 187
2-15-1525	enacted	Ch. 300	SB 195
2-15-1731	amended	Ch. 18	SB 27
2-15-1773	amended	Ch. 328	HB 458
2-15-2302	amended	Ch. 102	HB 141
2-15-3110	amended	Ch. 229	HB 469
	amended	Ch. 339	HB 622
2-15-3111	amended	Ch. 229	HB 469
2-15-3112	amended	Ch. 229	HB 469
2-15-3113	amended	Ch. 71	HB 287
	amended	Ch. 229	HB 469
2-15-3114	amended	Ch. 339	HB 622
2-16-117	amended	Ch. 295	SB 75
2-16-501	amended	Ch. 266	SB 357
2-17-808	amended	Ch. 50	SB 69
	amended	Ch. 279	SB 59
2-18-103	amended	Ch. 24	HB 97
2-18-501	amended	Ch. 251	HB 411
2-18-641	amended	Ch. 128	HB 212
2-18-702	amended	Ch. 128	HB 212
2-18-704	amended	Ch. 54	HB 53
3-1-102	amended	Ch. 38	SB 41
3-1-1001	amended	Ch. 335	HB 587
3-1-1010	amended	Ch. 335	HB 587

3-2-101	amended (not codified — referendum)	Ch. 203	SB 268
3-2-102	amended (not codified — referendum)	Ch. 203	SB 268
3-7-221	amended	Ch. 335	HB 587
3-7-222	amended	Ch. 335	HB 587
3-7-223	amended	Ch. 335	HB 587
3-7-224	amended	Ch. 335	HB 587
3-7-225	enacted	Ch. 335	HB 587
3-10-116	amended	Ch. 172	HB 480
3-10-301	amended	Ch. 284	SB 238
3-10-1004	amended	Ch. 284	SB 238
3-11-101	amended	Ch. 38	SB 41
3-11-103	amended	Ch. 284	SB 238
3-11-109	enacted	Ch. 38	SB 41
3-11-110	enacted	Ch. 38	SB 41
5-2-406	amended	Ch. 242	HB 91
5-4-104	enacted	Ch. 379	HB 641
5-5-202	amended	Ch. 92	SB 34
5-5-211	amended	Ch. 92	SB 34
5-5-215	amended	Ch. 126	HB 142
5-5-223	amended	Ch. 91	SB 32
5-5-226	amended	Ch. 91	SB 32
5-5-228	amended	Ch. 91	SB 32
5-11-210	amended	Ch. 126	HB 142
5-11-221	repealed	Ch. 19	SB 31
5-13-305	amended	Ch. 234	SB 52
7-1-2111	repealed	Ch. 128	HB 212
7-1-2112	repealed	Ch. 128	HB 212
7-1-4151	amended	Ch. 284	SB 238
7-2-103	amended	Ch. 347	SB 283
7-2-2201	amended	Ch. 347	SB 283
7-2-2202	amended	Ch. 347	SB 283
7-2-2213	amended	Ch. 128	HB 212
7-2-2218	amended	Ch. 128	HB 212
7-2-2222	amended	Ch. 128	HB 212
7-2-2225	amended	Ch. 128	HB 212
7-2-2411	amended	Ch. 347	SB 283
7-2-2412	amended	Ch. 347	SB 283
7-2-2801	enacted	Ch. 347	SB 283
7-2-2802	enacted	Ch. 347	SB 283
7-2-2803	enacted	Ch. 347	SB 283
7-2-2804	enacted	Ch. 347	SB 283
7-2-2805	enacted	Ch. 347	SB 283
7-2-2806	enacted	Ch. 347	SB 283
7-2-2807	enacted	Ch. 347	SB 283
7-2-2808	enacted	Ch. 347	SB 283
7-2-2809	enacted	Ch. 347	SB 283
7-2-4101	amended	Ch. 90	HB 426
	amended	Ch. 177	SB 91
7-2-4601	amended	Ch. 186	HB 575
7-2-4606	amended	Ch. 186	HB 575
7-2-4608	amended	Ch. 186	HB 575
7-2-4705	amended	Ch. 186	HB 575
7-2-4731	amended	Ch. 186	HB 575
7-2-4732	amended	Ch. 186	HB 575
7-2-4734	amended	Ch. 186	HB 575
7-2-4736	amended	Ch. 301	SB 234
7-2-4741	amended	Ch. 186	HB 575
7-3-1214	amended	Ch. 128	HB 212
7-3-1306	amended	Ch. 128	HB 212
7-3-1341	amended	Ch. 128	HB 212
7-3-4302	amended	Ch. 214	HB 380
7-3-4324	amended	Ch. 19	SB 31
7-4-2106	amended	Ch. 266	SB 357

7-4-2405	amended	Ch. 128	HB 212
7-4-2601	amended	Ch. 128	HB 212
7-4-2602	amended	Ch. 128	HB 212
7-4-2631	amended	Ch. 215	HB 529
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7-4-2632	amended	Ch. 347	SB 283
7-4-2636	amended	Ch. 45	SB 95
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7-4-2637	amended	Ch. 135	HB 338
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7-4-2703	amended	Ch. 128	HB 212
7-4-2705	amended	Ch. 128	HB 212
7-4-2711	amended	Ch. 244	HB 166
7-4-3006	amended	Ch. 128	HB 212
7-5-131	amended	Ch. 161	HB 391
7-5-2316	enacted	Ch. 132	HB 319
7-5-4316	enacted	Ch. 132	HB 319
7-6-202	amended	Ch. 306	SB 376
7-6-621	amended	Ch. 255	HB 552
7-6-2102	amended	Ch. 128	HB 212
7-6-2401	amended	Ch. 128	HB 212
7-6-2413	amended	Ch. 128	HB 212
7-6-2541	amended	Ch. 19	SB 31
7-6-4036	amended	Ch. 152	HB 123
7-7-2212	amended	Ch. 253	HB 538
7-7-2238	amended	Ch. 253	HB 538
7-7-2251	amended	Ch. 253	HB 538
7-7-2252	amended	Ch. 253	HB 538
7-7-2254	amended	Ch. 253	HB 538
7-7-4211	amended	Ch. 253	HB 538
7-7-4236	amended	Ch. 253	HB 538
7-7-4251	amended	Ch. 253	HB 538
7-7-4252	amended	Ch. 253	HB 538
7-7-4254	amended	Ch. 253	HB 538
7-7-4433	amended	Ch. 253	HB 538
7-7-4434	amended	Ch. 253	HB 538
7-8-2304	amended	Ch. 108	HB 348
7-10-220	amended	Ch. 253	HB 538
7-10-221	amended	Ch. 253	HB 538
7-11-1027	amended	Ch. 265	SB 288
7-12-2103	amended	Ch. 293	SB 1
7-12-2105	amended	Ch. 293	SB 1
7-12-2151	amended	Ch. 293	SB 1
7-12-2172	amended	Ch. 253	HB 538
7-12-4104	amended	Ch. 293	SB 1
7-12-4106	amended	Ch. 293	SB 1
7-12-4161	amended	Ch. 293	SB 1
7-12-4162	amended	Ch. 293	SB 1
7-12-4204	amended	Ch. 253	HB 538
7-13-2221	amended	Ch. 13	HB 101
7-13-2225	amended	Ch. 214	HB 380
7-13-2262	amended	Ch. 214	HB 380
7-13-2263	enacted	Ch. 214	HB 380
7-13-2272	amended	Ch. 214	HB 380
7-13-2273	amended	Ch. 214	HB 380
7-13-2277	amended	Ch. 13	HB 101
7-13-2278	amended	Ch. 13	HB 101
7-13-2279	amended	Ch. 13	HB 101
7-13-2282	amended	Ch. 214	HB 380
7-13-2303	amended	Ch. 35	HB 263
7-13-4107	amended	Ch. 301	SB 234
7-13-4208	repealed	Ch. 55	HB 62
	repealed	Ch. 214	HB 380

7-13-4310	repealed	Ch. 214	HB 380
7-13-4312	amended	Ch. 214	HB 380
7-14-2142	enacted	Ch. 180	HB 187
7-14-2407	enacted	Ch. 180	HB 187
7-14-4652	amended	Ch. 253	HB 538
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7-15-4211	amended	Ch. 376	HB 562
7-15-4214	amended	Ch. 374	HB 560
7-15-4215	amended	Ch. 374	HB 560
7-15-4221	amended	Ch. 376	HB 562
7-15-4237	amended	Ch. 374	HB 560
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7-15-4282	amended	Ch. 376	HB 562
7-15-4507	amended	Ch. 253	HB 538
7-21-3211	amended	Ch. 128	HB 212
7-22-2103	amended	Ch. 244	HB 166
7-22-2109	amended	Ch. 244	HB 166
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7-22-2120	amended	Ch. 244	HB 166
7-22-2121	amended	Ch. 244	HB 166
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7-22-2124	amended	Ch. 320	HB 133
7-22-2126	amended	Ch. 244	HB 166
7-22-2141	amended	Ch. 244	HB 166
7-22-2142	amended	Ch. 128	HB 212
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7-22-2148	amended	Ch. 320	HB 133
7-22-2153	amended	Ch. 244	HB 166
7-31-113	amended	Ch. 253	HB 538
7-32-101	amended	Ch. 128	HB 212
7-32-2102	amended	Ch. 128	HB 212
7-32-2111	amended	Ch. 128	HB 212
7-33-2109	amended	Ch. 255	HB 552
7-33-2110	amended	Ch. 64	HB 119
7-33-2116	enacted	Ch. 168	HB 508
7-33-2205	amended	Ch. 305	SB 340
7-33-2209	amended	Ch. 255	HB 552
7-33-2311	amended	Ch. 64	HB 119
7-33-2316	amended	Ch. 64	HB 119
7-33-2403	amended	Ch. 255	HB 552
7-33-4107	amended	Ch. 169	SB 222
7-33-4108	amended	Ch. 169	SB 222
7-33-4109	amended	Ch. 255	HB 552
7-33-4111	amended	Ch. 255	HB 552
7-34-102	amended	Ch. 255	HB 552
7-35-4102	amended	Ch. 198	SB 275
10-1-104	amended	Ch. 22	HB 39
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10-1-1502	enacted	Ch. 354	SB 417
10-1-1503	enacted	Ch. 354	SB 417
10-1-1504	enacted	Ch. 354	SB 417
10-1-1505	enacted	Ch. 354	SB 417
10-1-1506	enacted	Ch. 354	SB 417
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10-1-1512	enacted	Ch. 354	SB 417
10-1-1513	enacted	Ch. 354	SB 417
10-1-1514	enacted	Ch. 354	SB 417
10-1-1515	enacted	Ch. 354	SB 417
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10-1-1517	enacted	Ch. 354	SB 417
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10-3-101	amended	Ch. 228	HB 279
10-3-103	amended	Ch. 228	HB 279

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10-3-310 . . . . . amended . . . . . Ch. 228 . . . . . HB 279
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10-3-315 . . . . . amended . . . . . Ch. 228 . . . . . HB 279
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10-3-1203 . . . . . amended . . . . . Ch. 153 . . . . . HB 131
10-3-1216 . . . . . amended . . . . . Ch. 153 . . . . . HB 131
10-3-1307 . . . . . amended . . . . . Ch. 209 . . . . . HB 213
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10-3-1308 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
10-4-311 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
10-4-313 . . . . . amended . . . . . Ch. 2 . . . . . HB 22
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13-1-106 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
13-1-108 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
13-1-210. . . . . enacted . . . . . Ch. 182 . . . . . HB 330
13-1-303 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
13-1-304 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
13-2-108 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
13-2-110 . . . . . amended . . . . . Ch. 182 . . . . . HB 330
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13-2-115 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
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13-2-220 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
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13-3-105 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
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13-10-201 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
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13-10-203 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
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13-10-211 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
13-10-325 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
13-10-404 . . . . . amended . . . . . Ch. 242 . . . . . HB 91
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13-25-302 . . . enacted . . . Ch. 192 . . . SB 194
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13-25-308 . . . enacted . . . Ch. 192 . . . SB 194
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13-27-205 . . . amended . . . Ch. 372 . . . HB 310
13-27-206 . . . amended . . . Ch. 372 . . . HB 310
13-27-207 . . . amended . . . Ch. 372 . . . HB 310
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13-27-315 . . . amended . . . Ch. 372 . . . HB 310
13-27-501 . . . amended . . . Ch. 372 . . . HB 310
13-37-225 . . . amended . . . Ch. 6 . . . HB 89
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15-1-121 . . . amended . . . Ch. 393 . . . HB 495
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15-1-122 . . . amended . . . Ch. 339 . . . HB 622
15-1-123 . . . enacted and amended . . . Ch. 411 . . . SB 372
15-1-205 . . . amended . . . Ch. 379 . . . HB 641
15-1-206 . . . amended (voided by sec. 3, Ch. 353) . . . Ch. 353 . . . SB 411
15-1-210 . . . enacted . . . Ch. 276 . . . SB 382
15-1-216 . . . amended (voided by sec. 3, Ch. 353) . . . Ch. 353 . . . SB 411
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15-1-402 . . . amended . . . Ch. 261 . . . SB 219
15-1-409 . . . amended . . . Ch. 261 . . . SB 219
15-6-137 . . . amended . . . Ch. 309 . . . SB 172
15-6-138 . . . amended . . . Ch. 411 . . . SB 372
15-6-141 . . . amended . . . Ch. 309 . . . SB 172
amended . . . Ch. 411 . . . SB 372
15-6-156 . . . amended . . . Ch. 309 . . . SB 172
15-6-157 . . . amended . . . Ch. 309 . . . SB 172
15-6-193 . . . amended . . . Ch. 3 . . . HB 21
15-6-201 . . . amended . . . Ch. 278 . . . HB 618
15-6-203 . . . amended . . . Ch. 107 . . . HB 293
15-6-230 . . . enacted . . . Ch. 288 . . . SB 412
15-7-101 . . . amended . . . Ch. 356 . . . HB 132
15-7-102 . . . amended . . . Ch. 356 . . . HB 132
amended . . . Ch. 399 . . . SB 295
15-7-103 . . . amended . . . Ch. 356 . . . HB 132
15-7-139 . . . amended . . . Ch. 356 . . . HB 132
15-7-201 . . . amended . . . Ch. 356 . . . HB 132
15-7-307 . . . amended . . . Ch. 399 . . . SB 295
15-8-111 . . . amended . . . Ch. 373 . . . HB 460
amended . . . Ch. 399 . . . SB 295
15-8-601 . . . amended . . . Ch. 399 . . . SB 295
15-10-305 . . . amended . . . Ch. 152 . . . HB 123
15-10-420 . . . amended . . . Ch. 347 . . . SB 283
amended . . . Ch. 393 . . . HB 495
amended . . . Ch. 411 . . . SB 372
15-15-101 . . . amended . . . Ch. 197 . . . SB 248
15-23-101 . . . amended . . . Ch. 411 . . . SB 372

15-23-703 . . . . . amended . . . . . Ch. 128 . . . . . HB 212
amended . . . . . Ch. 406 . . . . . SB 266
15-23-715 . . . . . amended . . . . . Ch. 406 . . . . . SB 266
15-24-925 . . . . . amended . . . . . Ch. 339 . . . . . HB 622
15-24-3001 . . . . . amended . . . . . Ch. 128 . . . . . HB 212
15-24-3201. . . . . enacted . . . . . Ch. 405 . . . . . SB 265
15-24-3202. . . . . enacted . . . . . Ch. 405 . . . . . SB 265
15-24-3203. . . . . enacted . . . . . Ch. 405 . . . . . SB 265
15-24-3204. . . . . enacted . . . . . Ch. 405 . . . . . SB 265
15-24-3211. . . . . enacted . . . . . Ch. 405 . . . . . SB 265
15-30-2326 . . . . . amended . . . . . Ch. 140 . . . . . HB 467
15-30-2339 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
15-30-2368 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
15-30-2504 . . . . . amended . . . . . Ch. 269 . . . . . SB 413
15-30-2512 . . . . . amended . . . . . Ch. 269 . . . . . SB 413
15-30-2522 . . . . . amended . . . . . Ch. 340 . . . . . SB 11
15-30-2604 . . . . . amended . . . . . Ch. 269 . . . . . SB 413
amended . . . . . Ch. 381 . . . . . SB 166
15-30-3302 . . . . . amended . . . . . Ch. 269 . . . . . SB 413
15-31-101 . . . . . amended . . . . . Ch. 269 . . . . . SB 413
15-31-111 . . . . . amended . . . . . Ch. 269 . . . . . SB 413
15-31-130 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
15-31-135 . . . . . amended . . . . . Ch. 140 . . . . . HB 467
15-31-136 . . . . . amended . . . . . Ch. 140 . . . . . HB 467
15-31-141 . . . . . amended . . . . . Ch. 269 . . . . . SB 413
15-31-150 . . . . . amended . . . . . Ch. 123 . . . . . HB 80
15-31-502 . . . . . amended . . . . . Ch. 269 . . . . . SB 413
15-35-108 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
amended . . . . . Ch. 312 . . . . . HB 604
15-36-304 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
15-36-332 . . . . . amended . . . . . Ch. 128 . . . . . HB 212
amended . . . . . Ch. 418 . . . . . SB 329
15-39-110 . . . . . amended . . . . . Ch. 128 . . . . . HB 212
15-44-103 . . . . . amended . . . . . Ch. 356 . . . . . HB 132
15-65-121 . . . . . amended . . . . . Ch. 319 . . . . . HB 111
amended . . . . . Ch. 358 . . . . . HB 477
15-65-131 . . . . . amended . . . . . Ch. 319 . . . . . HB 111
15-66-102 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
15-70-324 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
16-1-106 . . . . . amended . . . . . Ch. 77 . . . . . SB 203
16-1-401 . . . . . amended . . . . . Ch. 277 . . . . . SB 389
16-1-404 . . . . . amended . . . . . Ch. 277 . . . . . SB 389
16-2-203 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
amended . . . . . Ch. 28 . . . . . HB 17
16-2-211. . . . . enacted . . . . . Ch. 345 . . . . . SB 215
16-3-214 . . . . . amended . . . . . Ch. 277 . . . . . SB 389
16-3-303 . . . . . amended . . . . . Ch. 77 . . . . . SB 203
16-3-316. . . . . enacted . . . . . Ch. 86 . . . . . HB 63
16-4-207 . . . . . amended . . . . . Ch. 86 . . . . . HB 63
16-4-311 . . . . . amended . . . . . Ch. 277 . . . . . SB 389
16-4-312 . . . . . amended . . . . . Ch. 81 . . . . . SB 289
16-4-1001. . . . . enacted . . . . . Ch. 412 . . . . . SB 29
16-4-1002. . . . . enacted . . . . . Ch. 412 . . . . . SB 29
16-4-1003. . . . . enacted . . . . . Ch. 412 . . . . . SB 29
16-4-1004. . . . . enacted . . . . . Ch. 412 . . . . . SB 29
16-4-1005. . . . . enacted . . . . . Ch. 412 . . . . . SB 29
16-4-1006. . . . . enacted . . . . . Ch. 412 . . . . . SB 29
16-4-1007. . . . . enacted . . . . . Ch. 412 . . . . . SB 29
16-4-1008. . . . . enacted . . . . . Ch. 412 . . . . . SB 29
16-4-1009. . . . . enacted . . . . . Ch. 412 . . . . . SB 29
16-11-119 . . . . . amended (voided by sec. 8, Ch. 324) . . . . . Ch. 19 . . . . . SB 31
amended . . . . . Ch. 324 . . . . . HB 296
17-1-106 . . . . . amended . . . . . Ch. 70 . . . . . HB 252

17-1-511	amended	Ch. 19	SB 31
17-2-304	amended	Ch. 386	SB 338
17-3-1003	amended	Ch. 371	HB 165
17-5-107	enacted	Ch. 253	HB 538
17-5-205	amended	Ch. 8	HB 38
17-5-703	amended	Ch. 389	HB 351
17-6-201	amended	Ch. 349	SB 326
17-6-203	amended	Ch. 99	HB 70
17-6-302	amended	Ch. 9	HB 44
17-6-308	amended	Ch. 349	SB 326
17-6-311	amended	Ch. 9	HB 44
17-6-312	amended	Ch. 9	HB 44
17-6-313	amended	Ch. 9	HB 44
17-7-102	amended	Ch. 394	HB 613
17-7-162	enacted	Ch. 394	HB 613
17-7-205	amended	Ch. 387	HB 5
17-7-502	amended	Ch. 57	HB 79
	amended	Ch. 58	HB 81
	amended	Ch. 61	HB 93
	amended	Ch. 147	HB 49
	amended	Ch. 339	HB 622
	amended (voided by sec. 14, Ch. 411)	Ch. 411	SB 372
17-8-303	amended	Ch. 82	SB 335
18-4-402	amended	Ch. 185	HB 491
18-7-302	amended	Ch. 148	HB 77
18-7-303	repealed	Ch. 148	HB 77
18-7-305	repealed	Ch. 148	HB 77
18-7-306	amended	Ch. 148	HB 77
18-11-121	enacted	Ch. 404	SB 229
19-2-303	amended	Ch. 99	HB 70
19-2-403	amended	Ch. 99	HB 70
19-2-408	amended	Ch. 64	HB 119
19-2-506	amended	Ch. 99	HB 70
19-2-603	amended	Ch. 99	HB 70
19-2-706	amended	Ch. 99	HB 70
19-2-715	amended	Ch. 99	HB 70
19-2-801	amended	Ch. 99	HB 70
19-2-802	amended	Ch. 99	HB 70
19-2-908	amended	Ch. 99	HB 70
19-3-108	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-315	amended	Ch. 369	HB 122
19-3-319	amended	Ch. 99	HB 70
19-3-401	amended	Ch. 99	HB 70
19-3-403	amended	Ch. 99	HB 70
19-3-412	amended	Ch. 99	HB 70
19-3-513	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-901	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-902	amended	Ch. 369	HB 122
19-3-904	amended	Ch. 369	HB 122
19-3-906	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-1002	amended	Ch. 369	HB 122
19-3-1008	amended	Ch. 369	HB 122
19-3-1106	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-1201	amended	Ch. 99	HB 70
19-3-1202	amended	Ch. 99	HB 70
19-3-1203	amended	Ch. 99	HB 70
19-3-1205	amended	Ch. 369	HB 122
19-3-1501	amended	Ch. 99	HB 70

19-3-1606	repealed	Ch. 99	HB 70
19-3-2114	amended	Ch. 99	HB 70
19-3-2117	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
19-3-2141	amended	Ch. 369	HB 122
19-5-301	amended	Ch. 335	HB 587
19-5-701	amended	Ch. 99	HB 70
19-7-101	amended	Ch. 155	HB 135
19-7-301	amended	Ch. 99	HB 70
19-7-302	amended	Ch. 99	HB 70
19-7-1001	amended	Ch. 99	HB 70
19-8-101	amended	Ch. 99	HB 70
	amended	Ch. 154	HB 134
19-8-601	amended	Ch. 99	HB 70
19-8-604	repealed	Ch. 99	HB 70
19-8-801	amended	Ch. 99	HB 70
19-8-1003	amended	Ch. 99	HB 70
19-13-301	amended	Ch. 99	HB 70
19-13-1101	enacted	Ch. 99	HB 70
19-17-102	amended	Ch. 64	HB 119
19-17-103	renumbered 19-17-205	Ch. 64	HB 119
19-17-104	repealed	Ch. 64	HB 119
19-17-106	amended	Ch. 64	HB 119
19-17-108	amended	Ch. 64	HB 119
19-17-109	enacted	Ch. 64	HB 119
19-17-110	enacted	Ch. 64	HB 119
19-17-111	enacted	Ch. 64	HB 119
19-17-112	enacted	Ch. 64	HB 119
19-17-113	enacted	Ch. 64	HB 119
19-17-201	amended	Ch. 64	HB 119
19-17-203	amended	Ch. 64	HB 119
19-17-204	amended	Ch. 64	HB 119
19-17-205	formerly 19-17-103	Ch. 64	HB 119
19-17-401	amended	Ch. 64	HB 119
19-17-402	repealed	Ch. 64	HB 119
19-17-403	amended	Ch. 64	HB 119
19-17-404	amended	Ch. 64	HB 119
	amended	Ch. 195	SB 223
19-17-408	renumbered 19-17-604	Ch. 64	HB 119
19-17-409	renumbered 19-17-605	Ch. 64	HB 119
19-17-410	renumbered 19-17-603	Ch. 64	HB 119
19-17-411	amended	Ch. 64	HB 119
19-17-412	enacted	Ch. 64	HB 119
19-17-501	amended	Ch. 64	HB 119
19-17-502	amended	Ch. 64	HB 119
19-17-503	amended	Ch. 64	HB 119
19-17-504	repealed	Ch. 64	HB 119
19-17-505	repealed	Ch. 64	HB 119
19-17-506	amended	Ch. 64	HB 119
19-17-601	enacted	Ch. 64	HB 119
19-17-602	enacted	Ch. 64	HB 119
19-17-603	formerly 19-17-410	Ch. 64	HB 119
19-17-604	formerly 19-17-408	Ch. 64	HB 119
19-17-605	formerly 19-17-409	Ch. 64	HB 119
19-17-606	enacted	Ch. 64	HB 119
19-20-101	amended	Ch. 59	HB 86
19-20-102	amended	Ch. 59	HB 86
19-20-203	amended	Ch. 59	HB 86
19-20-208	amended	Ch. 59	HB 86
	amended	Ch. 151	HB 116
19-20-305	amended	Ch. 59	HB 86
19-20-402	amended	Ch. 151	HB 116
19-20-403	amended	Ch. 151	HB 116

19-20-404	amended	Ch. 151	HB 116
19-20-405	amended	Ch. 59	HB 86
19-20-408	amended	Ch. 151	HB 116
19-20-410	amended	Ch. 151	HB 116
19-20-416	amended	Ch. 151	HB 116
19-20-427	amended	Ch. 151	HB 116
19-20-701	amended	Ch. 59	HB 86
19-20-702	amended	Ch. 59	HB 86
19-20-703	amended	Ch. 59	HB 86
19-20-705	amended	Ch. 59	HB 86
19-20-715	amended	Ch. 59	HB 86
	amended	Ch. 151	HB 116
19-20-717	amended	Ch. 59	HB 86
19-20-720	repealed	Ch. 59	HB 86
19-20-721	amended	Ch. 59	HB 86
19-20-731	amended	Ch. 59	HB 86
	amended	Ch. 151	HB 116
19-20-733	amended	Ch. 59	HB 86
19-20-802	amended	Ch. 151	HB 116
19-20-805	amended	Ch. 59	HB 86
19-20-1001	amended	Ch. 59	HB 86
19-20-1002	amended	Ch. 59	HB 86
19-20-1003	amended	Ch. 59	HB 86
19-20-1101	amended	Ch. 59	HB 86
19-21-203	amended	Ch. 273	SB 138
19-21-214	amended	Ch. 99	HB 70
	amended	Ch. 369	HB 122
20-1-213	amended	Ch. 15	HB 208
20-1-303	amended	Ch. 193	SB 208
20-3-205	amended	Ch. 152	HB 123
20-3-209	amended	Ch. 152	HB 123
20-3-305	amended	Ch. 271	HB 327
20-3-307	amended	Ch. 271	HB 327
20-3-313	amended	Ch. 271	HB 327
20-3-321	amended	Ch. 14	HB 204
	amended	Ch. 271	HB 327
20-3-332	amended	Ch. 14	HB 204
20-3-351	amended	Ch. 14	HB 204
20-3-352	amended	Ch. 14	HB 204
20-3-363	amended	Ch. 418	SB 329
20-5-321	amended	Ch. 211	HB 288
20-5-502	amended	Ch. 211	HB 288
20-5-503	amended	Ch. 211	HB 288
20-6-630	enacted	Ch. 132	HB 319
20-7-102	amended	Ch. 418	SB 329
20-7-103	enacted	Ch. 418	SB 329
20-7-104	enacted	Ch. 418	SB 329
20-7-334	amended	Ch. 337	HB 611
20-7-401	amended	Ch. 44	SB 73
20-7-411	amended	Ch. 44	SB 73
20-7-420	amended	Ch. 211	HB 288
20-7-702	amended	Ch. 171	HB 421
20-7-705	amended	Ch. 152	HB 123
20-7-712	amended	Ch. 171	HB 421
20-7-1201	amended	Ch. 19	SB 31
	amended	Ch. 418	SB 329
20-9-104	amended	Ch. 418	SB 329
20-9-115	amended	Ch. 152	HB 123
20-9-121	amended	Ch. 152	HB 123
20-9-131	amended	Ch. 152	HB 123
20-9-134	amended	Ch. 152	HB 123
20-9-141	amended	Ch. 152	HB 123
20-9-142	amended	Ch. 152	HB 123

20-9-151 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-9-152 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-9-161 . . . . . amended . . . . . Ch. 418 . . . . . SB 329
20-9-201 . . . . . amended . . . . . Ch. 418 . . . . . SB 329
20-9-204 . . . . . amended . . . . . Ch. 418 . . . . . SB 329
20-9-208 . . . . . amended . . . . . Ch. 418 . . . . . SB 329
20-9-211 . . . . . repealed . . . . . Ch. 152 . . . . . HB 123
20-9-213 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-9-235 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
20-9-306 . . . . . amended . . . . . Ch. 418 . . . . . SB 329
20-9-308 . . . . . amended . . . . . Ch. 418 . . . . . SB 329
20-9-310 . . . . . enacted . . . . . Ch. 418 . . . . . SB 329
20-9-323 . . . . . enacted . . . . . Ch. 418 . . . . . SB 329
20-9-342 . . . . . amended . . . . . Ch. 93 . . . . . SB 38
20-9-353 . . . . . amended . . . . . Ch. 418 . . . . . SB 329
20-9-366 . . . . . amended . . . . . Ch. 261 . . . . . SB 219
20-9-406 . . . . . amended . . . . . Ch. 271 . . . . . HB 327
20-9-421 . . . . . amended . . . . . Ch. 25 . . . . . HB 182
20-9-426 . . . . . amended . . . . . Ch. 271 . . . . . HB 327
20-9-427 . . . . . amended . . . . . Ch. 271 . . . . . HB 327
20-9-428 . . . . . amended . . . . . Ch. 271 . . . . . HB 327
20-9-429 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
20-9-430 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
20-9-431 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
20-9-432 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
20-9-439 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-9-471 . . . . . amended . . . . . Ch. 25 . . . . . HB 182
20-9-501 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
amended . . . . . Ch. 411 . . . . . SB 372
20-9-503 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-9-506 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-9-507 . . . . . amended . . . . . Ch. 418 . . . . . SB 329
20-9-516 . . . . . amended . . . . . Ch. 371 . . . . . HB 165
amended . . . . . Ch. 418 . . . . . SB 329
20-9-517 . . . . . enacted . . . . . Ch. 418 . . . . . SB 329
20-9-518 . . . . . enacted . . . . . Ch. 418 . . . . . SB 329
20-9-533 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-9-534 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-9-604 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-9-630 . . . . . amended . . . . . Ch. 411 . . . . . SB 372
. . . . . amended (voided by sec. 13, Ch. 411) . . . . . Ch. 418 . . . . . SB 329
20-10-144 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-10-146 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
. . . . . amended . . . . . Ch. 411 . . . . . SB 372
20-10-147 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
. . . . . amended . . . . . Ch. 418 . . . . . SB 329
20-15-313 . . . . . amended . . . . . Ch. 152 . . . . . HB 123
20-25-229 . . . . . amended . . . . . Ch. 300 . . . . . SB 195
20-25-426 . . . . . amended . . . . . Ch. 202 . . . . . SB 355
20-25-455 . . . . . enacted . . . . . Ch. 202 . . . . . SB 355
20-25-456 . . . . . enacted . . . . . Ch. 202 . . . . . SB 355
20-25-1401 . . . . . enacted . . . . . Ch. 199 . . . . . SB 280
20-25-1403 . . . . . enacted . . . . . Ch. 199 . . . . . SB 280
20-25-1404 . . . . . enacted . . . . . Ch. 199 . . . . . SB 280
20-26-603 . . . . . amended . . . . . Ch. 140 . . . . . HB 467
22-3-115 . . . . . enacted . . . . . Ch. 358 . . . . . HB 477
22-3-422 . . . . . amended . . . . . Ch. 187 . . . . . SB 3
22-3-423 . . . . . amended . . . . . Ch. 187 . . . . . SB 3
22-3-424 . . . . . amended . . . . . Ch. 187 . . . . . SB 3
23-1-105 . . . . . amended . . . . . Ch. 209 . . . . . HB 213
amended . . . . . Ch. 247 . . . . . HB 277
amended . . . . . Ch. 326 . . . . . HB 370
23-1-116 . . . . . amended . . . . . Ch. 233 . . . . . SB 43

23-1-117	amended	Ch. 233	SB	43
23-1-118	amended	Ch. 233	SB	43
23-1-128	amended	Ch. 191	SB	160
23-2-657	enacted	Ch. 157	HB	225
23-2-824	enacted	Ch. 106	HB	273
23-4-101	amended	Ch. 294	SB	16
23-4-105	amended	Ch. 294	SB	16
23-4-201	amended	Ch. 294	SB	16
23-4-202	amended	Ch. 294	SB	16
23-5-112	amended	Ch. 66	HB	127
23-5-412	amended	Ch. 66	HB	127
23-5-602	amended	Ch. 121	SB	361
23-5-603	amended	Ch. 121	SB	361
23-5-607	amended	Ch. 121	SB	361
23-5-608	amended	Ch. 66	HB	127
	amended	Ch. 121	SB	361
23-5-611	amended	Ch. 121	SB	361
23-5-621	amended	Ch. 121	SB	361
23-7-311	amended	Ch. 40	SB	51
25-1-104	enacted	Ch. 17	SB	021
25-4-203	amended	Ch. 238	SB	337
25-9-101	amended	Ch. 17	SB	21
25-9-608	amended	Ch. 19	SB	31
25-33-301	amended	Ch. 38	SB	41
25-35-502	amended	Ch. 284	SB	238
25-35-503	amended	Ch. 284	SB	238
25-35-606	amended	Ch. 284	SB	238
26-1-805	amended	Ch. 194	SB	210
26-1-1101	enacted	Ch. 352	SB	354
26-1-1102	enacted	Ch. 352	SB	354
26-1-1103	enacted	Ch. 352	SB	354
26-1-1104	enacted	Ch. 352	SB	354
26-1-1105	enacted	Ch. 352	SB	354
26-1-1106	enacted	Ch. 352	SB	354
26-1-1107	enacted	Ch. 352	SB	354
26-1-1108	enacted	Ch. 352	SB	354
27-1-717	amended	Ch. 48	HB	268
27-30-101	amended	Ch. 299	SB	173
30-10-103	amended	Ch. 19	SB	31
	amended	Ch. 58	HB	81
30-10-104	amended	Ch. 19	SB	31
30-10-105	amended	Ch. 9	HB	44
30-10-115	amended	Ch. 227	HB	125
30-10-209	amended	Ch. 227	HB	125
30-10-305	amended	Ch. 58	HB	81
30-10-308	amended	Ch. 227	HB	125
30-10-1001	enacted	Ch. 58	HB	81
30-10-1002	enacted	Ch. 58	HB	81
30-10-1003	enacted	Ch. 58	HB	81
30-10-1004	enacted	Ch. 58	HB	81
30-10-1005	enacted	Ch. 58	HB	81
30-10-1006	enacted	Ch. 58	HB	81
30-10-1007	enacted	Ch. 58	HB	81
30-10-1008	enacted	Ch. 58	HB	81
30-13-202	amended	Ch. 110	HB	428
30-13-203	amended	Ch. 26	SB	63
30-13-206	amended	Ch. 26	SB	63
30-13-207	amended	Ch. 26	SB	63
30-13-213	amended	Ch. 26	SB	63
30-13-217	amended	Ch. 26	SB	63
30-13-313	amended	Ch. 26	SB	63
30-13-338	amended	Ch. 19	SB	31
30-14-122	amended	Ch. 128	HB	212

30-14-1726	amended	Ch. 42	SB 60
30-14-1727	amended	Ch. 42	SB 60
30-16-301	amended	Ch. 26	SB 63
31-1-107	amended	Ch. 108	HB 348
31-1-202	amended	Ch. 317	HB 90
32-1-220	amended	Ch. 49	SB 64
32-1-372	amended	Ch. 49	SB 64
32-1-381	amended	Ch. 49	SB 64
32-1-422	amended	Ch. 9	HB 44
32-1-429	amended	Ch. 138	HB 432
32-2-406	amended	Ch. 19	SB 31
32-3-609	amended	Ch. 138	HB 432
32-5-102	amended	Ch. 317	HB 90
32-7-103	amended	Ch. 317	HB 90
32-9-101	amended	Ch. 317	HB 90
32-9-102	amended	Ch. 317	HB 90
32-9-103	amended	Ch. 19	SB 31
	amended	Ch. 317	HB 90
32-9-104	amended	Ch. 317	HB 90
32-9-105	amended	Ch. 317	HB 90
32-9-106	amended	Ch. 317	HB 90
32-9-107	amended	Ch. 317	HB 90
32-9-112	amended	Ch. 317	HB 90
32-9-113	amended	Ch. 317	HB 90
32-9-114	repealed	Ch. 317	HB 90
32-9-116	amended	Ch. 317	HB 90
32-9-117	amended	Ch. 317	HB 90
32-9-118	amended	Ch. 317	HB 90
32-9-120	amended	Ch. 317	HB 90
32-9-121	amended	Ch. 317	HB 90
32-9-122	amended	Ch. 317	HB 90
32-9-123	amended	Ch. 317	HB 90
32-9-124	amended	Ch. 317	HB 90
32-9-125	amended	Ch. 317	HB 90
32-9-126	amended	Ch. 317	HB 90
32-9-127	repealed	Ch. 317	HB 90
32-9-128	amended	Ch. 317	HB 90
32-9-129	amended	Ch. 317	HB 90
32-9-130	amended	Ch. 317	HB 90
32-9-133	amended	Ch. 317	HB 90
32-9-145	amended	Ch. 317	HB 90
32-9-148	amended	Ch. 317	HB 90
32-9-150	amended	Ch. 317	HB 90
32-9-151	amended	Ch. 317	HB 90
32-9-160	amended	Ch. 317	HB 90
32-9-165	enacted	Ch. 317	HB 90
32-9-166	enacted	Ch. 317	HB 90
32-9-167	enacted	Ch. 317	HB 90
32-9-168	enacted	Ch. 317	HB 90
32-9-169	enacted	Ch. 317	HB 90
32-9-170	enacted	Ch. 317	HB 90
33-1-102	amended	Ch. 54	HB 53
	amended	Ch. 199	SB 280
	amended	Ch. 237	SB 278
	amended	Ch. 351	SB 351
33-1-311	amended	Ch. 227	HB 125
33-2-301	amended	Ch. 350	SB 331
33-2-302	amended	Ch. 350	SB 331
33-2-303	amended	Ch. 350	SB 331
33-2-305	amended	Ch. 350	SB 331
33-2-307	amended	Ch. 350	SB 331
33-2-310	amended	Ch. 350	SB 331
33-2-311	amended	Ch. 350	SB 331

33-2-312 . . . . . amended . . . . . Ch. 350 . . . . . SB 331
33-2-313 . . . . . amended . . . . . Ch. 350 . . . . . SB 331
33-2-316 . . . . . amended . . . . . Ch. 350 . . . . . SB 331
33-2-317 . . . . . amended . . . . . Ch. 350 . . . . . SB 331
33-2-318. . . . . enacted . . . . . Ch. 350 . . . . . SB 331
33-2-319. . . . . enacted . . . . . Ch. 350 . . . . . SB 331
33-2-321 . . . . . amended . . . . . Ch. 350 . . . . . SB 331
33-2-322. . . . . enacted . . . . . Ch. 350 . . . . . SB 331
33-2-323. . . . . enacted . . . . . Ch. 350 . . . . . SB 331
33-2-601 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-2-609. . . . . repealed . . . . . Ch. 227 . . . . . HB 125
33-2-1323 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
33-2-1501 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-2-1903 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-2-1904 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-3-431 . . . . . amended . . . . . Ch. 108 . . . . . HB 348
33-4-309 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-10-201 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-202 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-205 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-210 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-216 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-217 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-219. . . . . repealed . . . . . Ch. 27 . . . . . SB 78
33-10-220. . . . . repealed . . . . . Ch. 27 . . . . . SB 78
33-10-222 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-223 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-224 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-225 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-226 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-227 . . . . . amended . . . . . Ch. 27 . . . . . SB 78
33-10-228. . . . . repealed . . . . . Ch. 27 . . . . . SB 78
33-16-201 . . . . . amended . . . . . Ch. 239 . . . . . SB 352
33-18-210 . . . . . amended . . . . . Ch. 239 . . . . . SB 352
33-18-224 . . . . . amended . . . . . Ch. 290 . . . . . HB 265
33-18-605 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
amended . . . . . Ch. 314 . . . . . HB 29
33-20-1112. . . . . enacted . . . . . Ch. 163 . . . . . HB 487
33-20-1501 . . . . . amended . . . . . Ch. 52 . . . . . SB 186
33-22-103. . . . . repealed . . . . . Ch. 227 . . . . . HB 125
33-22-114 . . . . . amended . . . . . Ch. 173 . . . . . HB 547
33-22-129 . . . . . amended . . . . . Ch. 54 . . . . . HB 53
33-22-134 . . . . . amended . . . . . Ch. 54 . . . . . HB 53
33-22-136 . . . . . amended . . . . . Ch. 54 . . . . . HB 53
33-22-508 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-22-1501 . . . . . amended . . . . . Ch. 133 . . . . . HB 324
33-22-1504 . . . . . amended . . . . . Ch. 133 . . . . . HB 324
33-22-1512 . . . . . amended . . . . . Ch. 133 . . . . . HB 324
33-22-1521 . . . . . amended . . . . . Ch. 133 . . . . . HB 324
33-22-1803 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-22-1821 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-22-1827. . . . . repealed . . . . . Ch. 227 . . . . . HB 125
33-22-1828. . . . . repealed . . . . . Ch. 227 . . . . . HB 125
33-22-2002 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-22-2004 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-22-2006 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-22-2008 . . . . . amended . . . . . Ch. 227 . . . . . HB 125
33-28-101 . . . . . amended . . . . . Ch. 75 . . . . . HB 419
33-28-102 . . . . . amended . . . . . Ch. 75 . . . . . HB 419
amended . . . . . Ch. 227 . . . . . HB 125
33-28-104 . . . . . amended . . . . . Ch. 75 . . . . . HB 419
33-28-107 . . . . . amended . . . . . Ch. 75 . . . . . HB 419
amended . . . . . Ch. 227 . . . . . HB 125

33-28-108	amended	Ch. 227	HB 125
33-28-202	amended	Ch. 75	HB 419
33-28-207	amended	Ch. 227	HB 125
33-28-301	amended	Ch. 75	HB 419
33-28-302	amended	Ch. 75	HB 419
33-28-304	amended	Ch. 75	HB 419
33-31-102	amended	Ch. 173	HB 547
	amended	Ch. 346	SB 221
33-31-115	amended	Ch. 351	SB 351
33-31-201	amended	Ch. 346	SB 221
35-1-216	amended	Ch. 26	SB 63
35-1-310	amended	Ch. 110	HB 428
35-1-534	amended	Ch. 322	HB 249
35-1-1028	amended	Ch. 26	SB 63
35-1-1029	amended	Ch. 26	SB 63
35-1-1104	amended	Ch. 26	SB 63
35-2-213	amended	Ch. 26	SB 63
35-2-822	amended	Ch. 26	SB 63
35-2-904	amended	Ch. 26	SB 63
35-3-209	amended	Ch. 26	SB 63
35-8-202	amended	Ch. 26	SB 63
35-8-208	amended	Ch. 26	SB 63
35-8-210	repealed	Ch. 26	SB 63
35-8-912	amended (voided by sec. 3, Ch. 355)	Ch. 26	SB 63
	amended	Ch. 355	SB 429
35-8-1003	amended	Ch. 26	SB 63
35-10-102	amended	Ch. 26	SB 63
35-10-701	amended	Ch. 26	SB 63
35-10-715	enacted	Ch. 26	SB 63
35-10-716	enacted	Ch. 26	SB 63
35-10-717	enacted	Ch. 26	SB 63
35-10-718	enacted	Ch. 26	SB 63
35-10-719	enacted	Ch. 26	SB 63
35-10-720	enacted	Ch. 26	SB 63
35-10-721	enacted	Ch. 26	SB 63
35-10-722	enacted	Ch. 26	SB 63
35-10-723	enacted	Ch. 26	SB 63
35-10-724	enacted	Ch. 26	SB 63
35-12-502	amended	Ch. 216	HB 535
35-12-503	repealed	Ch. 216	HB 535
35-12-504	amended	Ch. 216	HB 535
35-12-505	amended	Ch. 216	HB 535
35-12-506	amended	Ch. 216	HB 535
35-12-508	amended	Ch. 216	HB 535
35-12-509	amended	Ch. 216	HB 535
35-12-510	amended	Ch. 216	HB 535
35-12-511	enacted	Ch. 216	HB 535
35-12-512	enacted	Ch. 216	HB 535
35-12-513	enacted	Ch. 216	HB 535
35-12-514	enacted	Ch. 216	HB 535
35-12-515	enacted	Ch. 216	HB 535
35-12-516	enacted	Ch. 216	HB 535
35-12-522	formerly 35-12-1308	Ch. 216	HB 535
35-12-601	amended	Ch. 26	SB 63
	amended	Ch. 216	HB 535
35-12-602	amended	Ch. 216	HB 535
35-12-603	amended	Ch. 216	HB 535
35-12-604	amended	Ch. 216	HB 535
35-12-605	amended	Ch. 216	HB 535
35-12-606	repealed	Ch. 216	HB 535
35-12-607	amended	Ch. 216	HB 535
35-12-608	repealed	Ch. 216	HB 535
35-12-609	repealed	Ch. 216	HB 535

35-12-610	amended	Ch. 26	SB 63	
	amended	Ch. 216	HB 535	
35-12-614	enacted	Ch. 216	HB 535	
35-12-616	enacted	Ch. 216	HB 535	
35-12-617	enacted	Ch. 216	HB 535	
35-12-618	enacted	Ch. 216	HB 535	
35-12-701	amended	Ch. 216	HB 535	
35-12-702	repealed	Ch. 216	HB 535	
35-12-703	amended	Ch. 216	HB 535	
35-12-704	amended	Ch. 216	HB 535	
35-12-705	amended	Ch. 216	HB 535	
35-12-706	enacted	Ch. 216	HB 535	
35-12-707	enacted	Ch. 216	HB 535	
35-12-801	amended	Ch. 216	HB 535	
35-12-802	repealed	Ch. 216	HB 535	
35-12-803	amended	Ch. 216	HB 535	
35-12-804	repealed	Ch. 216	HB 535	
35-12-805	repealed	Ch. 216	HB 535	
35-12-806	enacted	Ch. 216	HB 535	
35-12-807	enacted	Ch. 216	HB 535	
35-12-808	enacted	Ch. 216	HB 535	
35-12-809	enacted	Ch. 216	HB 535	
35-12-810	enacted	Ch. 216	HB 535	
35-12-811	enacted	Ch. 216	HB 535	
35-12-901	amended	Ch. 216	HB 535	
35-12-902	amended	Ch. 216	HB 535	
35-12-903	repealed	Ch. 216	HB 535	
35-12-904	repealed	Ch. 216	HB 535	
35-12-905	enacted	Ch. 216	HB 535	
35-12-1001	amended	Ch. 216	HB 535	
35-12-1002	repealed	Ch. 216	HB 535	
35-12-1003	repealed	Ch. 216	HB 535	
35-12-1004	repealed	Ch. 216	HB 535	
35-12-1005	amended	Ch. 216	HB 535	
35-12-1006	amended	Ch. 216	HB 535	
35-12-1007	repealed	Ch. 216	HB 535	
35-12-1008	repealed	Ch. 216	HB 535	
35-12-1009	enacted	Ch. 216	HB 535	
35-12-1010	enacted	Ch. 216	HB 535	
35-12-1011	enacted	Ch. 216	HB 535	
35-12-1016	enacted	Ch. 216	HB 535	
35-12-1017	enacted	Ch. 216	HB 535	
35-12-1018	enacted	Ch. 216	HB 535	
35-12-1019	enacted	Ch. 216	HB 535	
35-12-1020	enacted	Ch. 216	HB 535	
35-12-1021	enacted	Ch. 216	HB 535	
35-12-1022	enacted	Ch. 216	HB 535	
35-12-1101	repealed	Ch. 216	HB 535	
35-12-1102	repealed	Ch. 216	HB 535	
35-12-1103	amended	Ch. 216	HB 535	
35-12-1104	repealed	Ch. 216	HB 535	
35-12-1105	amended	Ch. 216	HB 535	
35-12-1106	enacted	Ch. 216	HB 535	
35-12-1107	enacted	Ch. 216	HB 535	
35-12-1201	amended	Ch. 216	HB 535	
35-12-1202	amended	Ch. 216	HB 535	
35-12-1203	repealed	Ch. 216	HB 535	
35-12-1204	repealed	Ch. 216	HB 535	
35-12-1205	enacted	Ch. 216	HB 535	
35-12-1211	enacted	Ch. 216	HB 535	
35-12-1212	enacted	Ch. 216	HB 535	
35-12-1213	enacted	Ch. 216	HB 535	
35-12-1214	enacted	Ch. 216	HB 535	

35-12-1215 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1216 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1301 . . . amended . . . Ch. 216 . . . HB 535
35-12-1302 . . . amended . . . Ch. 26 . . . SB 63
amended . . . Ch. 216 . . . HB 535
35-12-1303 . . . repealed . . . Ch. 216 . . . HB 535
35-12-1304 . . . repealed . . . Ch. 216 . . . HB 535
35-12-1305 . . . repealed . . . Ch. 216 . . . HB 535
35-12-1306 . . . repealed . . . Ch. 216 . . . HB 535
35-12-1307 . . . amended . . . Ch. 216 . . . HB 535
35-12-1308 . . . amended and renumbered 35-12-522 . . . Ch. 216 . . . HB 535
35-12-1309 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1310 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1311 . . . enacted . . . Ch. 26 . . . SB 63
35-12-1312 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1313 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1401 . . . amended . . . Ch. 216 . . . HB 535
35-12-1402 . . . amended . . . Ch. 216 . . . HB 535
35-12-1403 . . . amended . . . Ch. 216 . . . HB 535
35-12-1404 . . . amended . . . Ch. 216 . . . HB 535
35-12-1405 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1501 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1502 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1503 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1504 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1505 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1511 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1512 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1513 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1514 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1515 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1520 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1521 . . . enacted . . . Ch. 216 . . . HB 535
35-12-1522 . . . enacted . . . Ch. 216 . . . HB 535
35-16-303 . . . amended . . . Ch. 19 . . . SB 31
35-19-101 . . . repealed . . . Ch. 67 . . . HB 169
35-19-102 . . . repealed . . . Ch. 67 . . . HB 169
35-19-104 . . . repealed . . . Ch. 67 . . . HB 169
35-19-105 . . . repealed . . . Ch. 67 . . . HB 169
35-19-106 . . . repealed . . . Ch. 67 . . . HB 169
35-19-107 . . . amended . . . Ch. 20 . . . SB 62
repealed . . . Ch. 67 . . . HB 169
35-19-108 . . . repealed . . . Ch. 67 . . . HB 169
35-19-201 . . . repealed . . . Ch. 67 . . . HB 169
35-19-202 . . . repealed . . . Ch. 67 . . . HB 169
35-19-203 . . . repealed . . . Ch. 67 . . . HB 169
35-19-204 . . . repealed . . . Ch. 67 . . . HB 169
35-19-205 . . . repealed . . . Ch. 67 . . . HB 169
35-19-301 . . . repealed . . . Ch. 67 . . . HB 169
35-19-302 . . . repealed . . . Ch. 67 . . . HB 169
35-19-303 . . . repealed . . . Ch. 67 . . . HB 169
35-19-304 . . . repealed . . . Ch. 67 . . . HB 169
35-19-305 . . . repealed . . . Ch. 67 . . . HB 169
35-19-306 . . . repealed . . . Ch. 67 . . . HB 169
35-19-307 . . . repealed . . . Ch. 67 . . . HB 169
35-19-308 . . . repealed . . . Ch. 67 . . . HB 169
35-19-309 . . . repealed . . . Ch. 67 . . . HB 169
35-19-310 . . . repealed . . . Ch. 67 . . . HB 169
35-19-311 . . . amended and repealed . . . Ch. 67 . . . HB 169
35-19-312 . . . repealed . . . Ch. 67 . . . HB 169
35-19-313 . . . repealed . . . Ch. 67 . . . HB 169
35-19-314 . . . repealed . . . Ch. 67 . . . HB 169
35-19-315 . . . repealed . . . Ch. 67 . . . HB 169

37-1-131 . . . . . amended . . . . . Ch. 51 . . . . . SB 165
amended . . . . . Ch. 122 . . . . . HB 25
37-1-142. . . . . enacted . . . . . Ch. 330 . . . . . HB 525
37-1-304 . . . . . amended . . . . . Ch. 100 . . . . . HB 94
37-1-305 . . . . . amended . . . . . Ch. 100 . . . . . HB 94
37-1-307 . . . . . amended . . . . . Ch. 100 . . . . . HB 94
37-1-316 . . . . . amended . . . . . Ch. 419 . . . . . SB 423
37-2-202. . . . . enacted . . . . . Ch. 122 . . . . . HB 25
37-2-316. . . . . enacted . . . . . Ch. 122 . . . . . HB 25
37-2-401. . . . . enacted . . . . . Ch. 291 . . . . . HB 416
37-2-402. . . . . enacted . . . . . Ch. 291 . . . . . HB 416
37-2-403. . . . . enacted . . . . . Ch. 291 . . . . . HB 416
37-2-404. . . . . enacted . . . . . Ch. 291 . . . . . HB 416
37-2-409. . . . . enacted . . . . . Ch. 291 . . . . . HB 416
37-2-410. . . . . enacted . . . . . Ch. 291 . . . . . HB 416
37-3-203 . . . . . amended . . . . . Ch. 122 . . . . . HB 25
amended . . . . . Ch. 124 . . . . . HB 82
37-3-208 . . . . . repealed . . . . . Ch. 122 . . . . . HB 25
37-3-310 . . . . . amended . . . . . Ch. 100 . . . . . HB 94
37-3-343 . . . . . amended . . . . . Ch. 419 . . . . . SB 423
37-3-347 . . . . . amended . . . . . Ch. 419 . . . . . SB 423
37-3-401 . . . . . amended . . . . . Ch. 122 . . . . . HB 25
37-4-101 . . . . . amended . . . . . Ch. 100 . . . . . HB 94
37-4-311 . . . . . amended . . . . . Ch. 122 . . . . . HB 25
37-4-511 . . . . . amended . . . . . Ch. 100 . . . . . HB 94
37-6-302 . . . . . amended . . . . . Ch. 100 . . . . . HB 94
37-7-101 . . . . . amended . . . . . Ch. 119 . . . . . SB 189
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37-7-105. . . . . enacted . . . . . Ch. 119 . . . . . SB 189
37-7-201 . . . . . amended . . . . . Ch. 122 . . . . . HB 25
37-7-204 . . . . . repealed . . . . . Ch. 100 . . . . . HB 94
37-7-1501. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1502. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1503. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1504. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1505. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1506. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1507. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1508. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1509. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1510. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1511. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1512. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1513. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-7-1514. . . . . enacted . . . . . Ch. 241 . . . . . HB 83
37-8-102 . . . . . amended . . . . . Ch. 392 . . . . . HB 377
37-8-202 . . . . . amended . . . . . Ch. 122 . . . . . HB 25
amended . . . . . Ch. 173 . . . . . HB 547
37-8-422 . . . . . amended . . . . . Ch. 392 . . . . . HB 377
37-8-423. . . . . enacted . . . . . Ch. 392 . . . . . HB 377
37-8-424. . . . . enacted . . . . . Ch. 392 . . . . . HB 377
37-8-425. . . . . enacted . . . . . Ch. 392 . . . . . HB 377
37-8-426. . . . . enacted . . . . . Ch. 392 . . . . . HB 377
37-15-102 . . . . . amended . . . . . Ch. 342 . . . . . SB 132
37-15-103 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
amended . . . . . Ch. 342 . . . . . SB 132
37-16-103 . . . . . amended . . . . . Ch. 342 . . . . . SB 132
37-16-401 . . . . . amended . . . . . Ch. 342 . . . . . SB 132
37-16-405 . . . . . amended . . . . . Ch. 342 . . . . . SB 132
37-19-904 . . . . . amended . . . . . Ch. 158 . . . . . HB 256
37-31-305 . . . . . amended . . . . . Ch. 100 . . . . . HB 94
37-31-309 . . . . . amended . . . . . Ch. 100 . . . . . HB 94
37-31-312 . . . . . amended . . . . . Ch. 100 . . . . . HB 94

37-35-102	amended	Ch. 72	HB 356
37-47-201	amended	Ch. 328	HB 458
37-47-202	amended	Ch. 100	HB 94
37-47-302	amended	Ch. 179	SB 118
37-47-304	amended	Ch. 179	SB 118
37-47-310	amended	Ch. 100	HB 94
37-47-316	amended	Ch. 328	HB 458
37-47-317	repealed	Ch. 328	HB 458
37-47-318	amended	Ch. 328	HB 458
37-47-351	amended	Ch. 100	HB 94
37-51-204	amended	Ch. 100	HB 94
37-51-302	amended	Ch. 79	SB 256
37-51-305	amended	Ch. 79	SB 256
37-51-308	amended	Ch. 79	SB 256
	amended	Ch. 100	HB 94
37-51-309	amended	Ch. 79	SB 256
37-51-602	amended	Ch. 79	SB 256
37-51-605	amended	Ch. 100	HB 94
37-54-102	amended	Ch. 270	HB 188
37-54-105	amended	Ch. 270	HB 188
37-54-501	enacted	Ch. 270	HB 188
37-54-502	enacted	Ch. 270	HB 188
37-54-503	enacted	Ch. 270	HB 188
37-54-504	enacted	Ch. 270	HB 188
37-54-505	enacted	Ch. 270	HB 188
37-54-506	enacted	Ch. 270	HB 188
37-54-507	enacted	Ch. 270	HB 188
37-54-508	enacted	Ch. 270	HB 188
37-54-509	enacted	Ch. 270	HB 188
37-54-510	enacted	Ch. 270	HB 188
37-54-511	enacted	Ch. 270	HB 188
37-54-512	enacted	Ch. 270	HB 188
37-54-513	enacted	Ch. 270	HB 188
37-54-514	enacted	Ch. 270	HB 188
37-54-515	enacted	Ch. 270	HB 188
37-54-516	enacted	Ch. 270	HB 188
37-54-517	enacted	Ch. 270	HB 188
37-54-518	enacted	Ch. 270	HB 188
37-54-519	enacted	Ch. 270	HB 188
37-60-101	amended	Ch. 100	HB 94
37-60-202	amended	Ch. 100	HB 94
37-60-303	amended	Ch. 100	HB 94
37-67-306	amended	Ch. 100	HB 94
37-67-312	amended	Ch. 100	HB 94
37-67-313	amended	Ch. 100	HB 94
39-2-206	amended	Ch. 315	HB 43
39-2-210	amended	Ch. 315	HB 43
39-2-313	amended	Ch. 315	HB 43
39-3-201	amended	Ch. 12	HB 84
39-3-213	amended	Ch. 12	HB 84
39-3-406	amended	Ch. 12	HB 84
39-4-103	amended	Ch. 212	HB 300
39-4-104	amended	Ch. 212	HB 300
39-4-107	amended	Ch. 128	HB 212
	amended	Ch. 212	HB 300
39-4-109	amended	Ch. 212	HB 300
39-11-103	amended	Ch. 348	SB 294
39-11-201	repealed	Ch. 348	SB 294
39-11-202	amended	Ch. 348	SB 294
39-31-107	amended	Ch. 10	HB 57
39-51-201	amended	Ch. 98	SB 342
	amended	Ch. 123	HB 80
39-51-204	amended	Ch. 123	HB 80

39-51-301 . . . . . amended . . . . . Ch. 123 . . . . . HB 80
39-51-1212 . . . . . amended . . . . . Ch. 123 . . . . . HB 80
39-51-1214 . . . . . amended . . . . . Ch. 123 . . . . . HB 80
39-51-2101 . . . . . amended . . . . . Ch. 123 . . . . . HB 80
39-51-2111 . . . . . amended . . . . . Ch. 123 . . . . . HB 80
39-51-2302 . . . . . amended . . . . . Ch. 123 . . . . . HB 80
39-51-3206 . . . . . amended . . . . . Ch. 123 . . . . . HB 80
39-51-3208. . . . . enacted . . . . . Ch. 123 . . . . . HB 80
39-71-105 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-107 . . . . . amended . . . . . Ch. 150 . . . . . HB 110
39-71-116 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-118 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
amended . . . . . Ch. 255 . . . . . HB 552
amended . . . . . Ch. 262 . . . . . SB 242
39-71-123 . . . . . amended . . . . . Ch. 255 . . . . . HB 552
39-71-225 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-315 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-320 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-401 . . . . . amended . . . . . Ch. 200 . . . . . SB 287
39-71-403 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-407 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
amended . . . . . Ch. 315 . . . . . HB 43
39-71-417 . . . . . amended . . . . . Ch. 200 . . . . . SB 287
39-71-418 . . . . . amended . . . . . Ch. 150 . . . . . HB 110
39-71-703 . . . . . amended . . . . . Ch. 36 . . . . . HB 359
amended . . . . . Ch. 167 . . . . . HB 334
39-71-704 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-711 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-717. . . . . enacted . . . . . Ch. 167 . . . . . HB 334
39-71-721 . . . . . amended . . . . . Ch. 36 . . . . . HB 359
amended . . . . . Ch. 167 . . . . . HB 334
39-71-736 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-741 . . . . . amended . . . . . Ch. 36 . . . . . HB 359
amended . . . . . Ch. 167 . . . . . HB 334
39-71-1011 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-1025 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-1031 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-1036. . . . . enacted . . . . . Ch. 167 . . . . . HB 334
39-71-1041. . . . . enacted . . . . . Ch. 167 . . . . . HB 334
39-71-1042. . . . . enacted . . . . . Ch. 167 . . . . . HB 334
39-71-1043. . . . . enacted . . . . . Ch. 167 . . . . . HB 334
39-71-1049. . . . . enacted . . . . . Ch. 167 . . . . . HB 334
39-71-1050. . . . . enacted . . . . . Ch. 167 . . . . . HB 334
39-71-1051. . . . . enacted . . . . . Ch. 167 . . . . . HB 334
39-71-1101 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-1102 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-1106 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
39-71-2215 . . . . . amended . . . . . Ch. 150 . . . . . HB 110
39-71-2352 . . . . . amended (line-item vetoed) . . . . . Ch. 312 . . . . . HB 604
39-71-2361 . . . . . amended . . . . . Ch. 167 . . . . . HB 334
40-15-201 . . . . . amended . . . . . Ch. 37 . . . . . SB 26
41-1-405. . . . . amended (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
41-3-103 . . . . . amended . . . . . Ch. 223 . . . . . SB 304
41-3-201 . . . . . amended . . . . . Ch. 223 . . . . . SB 304
amended . . . . . Ch. 278 . . . . . HB 618
41-3-301 . . . . . amended . . . . . Ch. 11 . . . . . HB 74
amended . . . . . Ch. 223 . . . . . SB 304
41-3-425 . . . . . amended . . . . . Ch. 343 . . . . . SB 153
41-3-427 . . . . . amended . . . . . Ch. 11 . . . . . HB 74
amended . . . . . Ch. 223 . . . . . SB 304
41-3-432 . . . . . amended . . . . . Ch. 223 . . . . . SB 304
41-5-206 . . . . . amended . . . . . Ch. 87 . . . . . HB 126
41-5-216 . . . . . amended . . . . . Ch. 419 . . . . . SB 423

41-5-2003 . . . amended . . . Ch. 95 . . . SB 67
44-2-801 . . . enacted . . . Ch. 159 . . . HB 269
44-4-1201 . . . enacted . . . Ch. 318 . . . HB 106
44-4-1202 . . . enacted . . . Ch. 318 . . . HB 106
44-4-1203 . . . enacted . . . Ch. 318 . . . HB 106
44-4-1204 . . . enacted . . . Ch. 318 . . . HB 106
44-4-1205 . . . enacted . . . Ch. 318 . . . HB 106
44-4-1206 . . . enacted . . . Ch. 318 . . . HB 106
44-6-103 . . . amended . . . Ch. 125 . . . HB 117
44-12-102 . . . amended . . . Ch. 156 . . . HB 185
45-5-502 . . . amended . . . Ch. 46 . . . SB 152
45-6-101 . . . amended . . . Ch. 258 . . . SB 124
45-6-106 . . . amended . . . Ch. 220 . . . SB 180
45-6-203 . . . amended . . . Ch. 258 . . . SB 124
45-7-309 . . . amended . . . Ch. 318 . . . HB 106
45-8-221 . . . enacted . . . Ch. 274 . . . SB 149
45-8-317 . . . amended . . . Ch. 384 . . . SB 279
45-8-328 . . . amended . . . Ch. 384 . . . SB 279
45-8-351 . . . amended . . . Ch. 384 . . . SB 279
45-9-101 . . . amended . . . Ch. 156 . . . HB 185
45-9-102 . . . amended . . . Ch. 156 . . . HB 185
45-9-104 . . . amended . . . Ch. 194 . . . SB 210
45-9-110 . . . amended . . . Ch. 156 . . . HB 185
45-9-203 . . . amended . . . Ch. 419 . . . SB 423
46-5-224 . . . amended . . . Ch. 283 . . . SB 42
46-6-412 . . . amended . . . Ch. 19 . . . SB 31
46-8-101 . . . amended . . . Ch. 344 . . . SB 187
46-8-113 . . . amended . . . Ch. 344 . . . SB 187
46-8-114 . . . amended . . . Ch. 344 . . . SB 187
46-13-109 . . . repealed . . . Ch. 130 . . . HB 250
46-13-110 . . . amended . . . Ch. 130 . . . HB 250
46-17-311 . . . amended . . . Ch. 38 . . . SB 41
46-18-201 . . . amended . . . Ch. 318 . . . HB 106
46-18-202 . . . amended . . . Ch. 419 . . . SB 423
46-18-203 . . . amended . . . Ch. 230 . . . HB 548
46-23-103 . . . amended . . . Ch. 102 . . . HB 141
46-23-104 . . . amended . . . Ch. 102 . . . HB 141
46-23-109 . . . amended . . . Ch. 102 . . . HB 141
46-23-201 . . . amended . . . Ch. 102 . . . HB 141
amended . . . Ch. 176 . . . SB 76
46-23-202 . . . amended . . . Ch. 102 . . . HB 141
46-23-210 . . . amended . . . Ch. 102 . . . HB 141
46-23-215 . . . amended . . . Ch. 102 . . . HB 141
46-23-218 . . . amended . . . Ch. 102 . . . HB 141
46-23-301 . . . amended . . . Ch. 102 . . . HB 141
46-23-302 . . . amended . . . Ch. 102 . . . HB 141
46-23-306 . . . amended . . . Ch. 102 . . . HB 141
46-23-307 . . . amended . . . Ch. 102 . . . HB 141
46-23-1025 . . . amended . . . Ch. 102 . . . HB 141
46-30-411 . . . amended . . . Ch. 39 . . . SB 46
47-1-102 . . . amended . . . Ch. 344 . . . SB 187
47-1-103 . . . amended . . . Ch. 24 . . . HB 97
47-1-104 . . . amended . . . Ch. 24 . . . HB 97
amended (not codified — referendum) . . . Ch. 307 . . . HB 627
47-1-105 . . . amended . . . Ch. 24 . . . HB 97
amended . . . Ch. 344 . . . SB 187
47-1-110 . . . amended . . . Ch. 31 . . . HB 96
47-1-111 . . . amended . . . Ch. 344 . . . SB 187
47-1-118 . . . enacted . . . Ch. 344 . . . SB 187
47-1-201 . . . amended . . . Ch. 24 . . . HB 97
amended . . . Ch. 394 . . . HB 613
47-1-202 . . . amended . . . Ch. 344 . . . SB 187

47-1-205 . . . . . amended . . . . . Ch. 24 . . . . . HB 97
amended . . . . . Ch. 344 . . . . . SB 187
47-1-215 . . . . . amended . . . . . Ch. 344 . . . . . SB 187
47-1-216 . . . . . amended . . . . . Ch. 24 . . . . . HB 97
amended . . . . . Ch. 344 . . . . . SB 187
49-2-101 . . . . . amended . . . . . Ch. 201 . . . . . SB 290
49-2-203 . . . . . amended . . . . . Ch. 205 . . . . . HB 95
49-2-303 . . . . . amended . . . . . Ch. 205 . . . . . HB 95
49-2-305 . . . . . amended . . . . . Ch. 205 . . . . . HB 95
49-2-403 . . . . . amended . . . . . Ch. 205 . . . . . HB 95
49-2-504 . . . . . amended . . . . . Ch. 205 . . . . . HB 95
49-3-201 . . . . . amended . . . . . Ch. 201 . . . . . SB 290
49-4-509 . . . . . amended . . . . . Ch. 30 . . . . . HB 65
50-4-504 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
50-6-320. . . . . enacted . . . . . Ch. 237 . . . . . SB 278
50-15-114 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
50-20-201 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-20-202 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-20-203 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-20-204 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-20-205 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-20-208 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-20-209 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-20-211 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-20-212 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-20-215 . . . . repealed (not codified — referendum) . . . . . Ch. 307 . . . . . HB 627
50-31-306 . . . . . amended . . . . . Ch. 156 . . . . . HB 185
50-31-310 . . . . . amended . . . . . Ch. 156 . . . . . HB 185
50-32-222 . . . . . amended . . . . . Ch. 156 . . . . . HB 185
50-40-103 . . . . . amended . . . . . Ch. 7 . . . . . HB 19
50-40-104 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
50-40-201 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
50-46-101. . . . . repealed . . . . . Ch. 419 . . . . . SB 423
50-46-102. . . . . repealed . . . . . Ch. 419 . . . . . SB 423
50-46-103 . . . . . amended . . . . . Ch. 124 . . . . . HB 82
repealed . . . . . Ch. 419 . . . . . SB 423
50-46-201 . . . . . amended . . . . . Ch. 315 . . . . . HB 43
amended and repealed . . . . . Ch. 419 . . . . . SB 423
50-46-202 . . . . . amended . . . . . Ch. 124 . . . . . HB 82
amended and repealed . . . . . Ch. 419 . . . . . SB 423
50-46-205 . . . . . amended . . . . . Ch. 315 . . . . . HB 43
repealed . . . . . Ch. 419 . . . . . SB 423
50-46-206. . . . . repealed . . . . . Ch. 419 . . . . . SB 423
50-46-207. . . . . repealed . . . . . Ch. 419 . . . . . SB 423
50-46-210. . . . . repealed . . . . . Ch. 419 . . . . . SB 423
50-46-301. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-302. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-303. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-307. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-308. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-309. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-310. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-317. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-318. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-319. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-320. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-327. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-328. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-329. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-330. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-331. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-332. . . . . enacted . . . . . Ch. 419 . . . . . SB 423
50-46-339. . . . . enacted . . . . . Ch. 419 . . . . . SB 423

50-46-340	enacted	Ch. 419	SB 423
50-46-341	enacted	Ch. 419	SB 423
50-46-342	enacted	Ch. 419	SB 423
50-46-343	enacted	Ch. 419	SB 423
50-46-344	enacted	Ch. 419	SB 423
50-50-102	amended	Ch. 357	HB 258
50-50-103	amended	Ch. 208	HB 191
50-50-202	amended	Ch. 208	HB 191
50-51-101	amended	Ch. 334	HB 559
50-51-102	amended	Ch. 334	HB 559
	amended	Ch. 357	HB 258
50-51-103	amended	Ch. 334	HB 559
50-51-201	amended	Ch. 334	HB 559
50-51-401	amended	Ch. 334	HB 559
50-74-218	amended	Ch. 160	HB 315
50-74-307	amended	Ch. 160	HB 315
50-76-113	amended	Ch. 100	HB 94
52-2-308	amended	Ch. 377	HB 565
52-2-310	amended	Ch. 377	HB 565
52-2-311	amended	Ch. 377	HB 565
52-3-115	amended	Ch. 312	HB 604
53-1-203	amended	Ch. 21	SB 72
53-4-209	amended	Ch. 287	SB 385
53-4-210	amended	Ch. 361	SB 156
53-6-116	amended	Ch. 351	SB 351
53-6-124	amended	Ch. 397	SB 241
53-6-125	amended	Ch. 397	SB 241
53-6-126	repealed	Ch. 397	SB 241
53-6-702	amended	Ch. 346	SB 221
	amended (voided by sec. 4, Ch. 346)	Ch. 351	SB 351
53-6-703	repealed	Ch. 351	SB 351
53-6-704	amended	Ch. 351	SB 351
53-6-705	amended	Ch. 351	SB 351
53-6-707	amended	Ch. 351	SB 351
53-6-710	enacted	Ch. 351	SB 351
53-6-711	enacted	Ch. 351	SB 351
53-6-1001	amended	Ch. 19	SB 31
53-9-103	amended	Ch. 32	HB 114
53-9-123	amended	Ch. 32	HB 114
53-9-128	amended	Ch. 32	HB 114
53-10-203	amended	Ch. 327	HB 409
53-19-310	amended	Ch. 312	HB 604
53-20-221	amended	Ch. 123	HB 80
53-20-222	amended	Ch. 123	HB 80
53-21-153	repealed	Ch. 329	HB 518
53-21-701	amended	Ch. 351	SB 351
53-21-1203	amended	Ch. 232	SB 28
53-21-1301	enacted	Ch. 329	HB 518
53-21-1302	enacted	Ch. 329	HB 518
53-21-1303	enacted	Ch. 329	HB 518
53-21-1304	enacted	Ch. 329	HB 518
53-21-1305	enacted	Ch. 329	HB 518
53-21-1311	enacted	Ch. 329	HB 518
53-21-1312	enacted	Ch. 329	HB 518
53-21-1313	enacted	Ch. 329	HB 518
53-21-1314	enacted	Ch. 329	HB 518
53-21-1315	enacted	Ch. 329	HB 518
53-21-1321	enacted	Ch. 329	HB 518
53-21-1322	enacted	Ch. 329	HB 518
53-21-1323	enacted	Ch. 329	HB 518
53-21-1324	enacted	Ch. 329	HB 518
53-21-1325	enacted	Ch. 329	HB 518
53-21-1331	enacted	Ch. 329	HB 518

53-21-1332. . . . . enacted . . . . . Ch. 329 . . . . . HB 518
53-21-1333. . . . . enacted . . . . . Ch. 329 . . . . . HB 518
53-21-1334. . . . . enacted . . . . . Ch. 329 . . . . . HB 518
53-21-1335. . . . . enacted . . . . . Ch. 329 . . . . . HB 518
60-1-217. . . . . enacted . . . . . Ch. 105 . . . . . HB 270
60-1-218. . . . . enacted . . . . . Ch. 219 . . . . . SB 179
60-1-219. . . . . enacted . . . . . Ch. 222 . . . . . SB 213
60-2-118. . . . . enacted . . . . . Ch. 132 . . . . . HB 319
60-2-141. . . . . enacted . . . . . Ch. 180 . . . . . HB 187
60-2-240. . . . . enacted . . . . . Ch. 166 . . . . . HB 594
61-1-101 . . . . . amended . . . . . Ch. 209 . . . . . HB 213
amended . . . . . Ch. 247 . . . . . HB 277
amended . . . . . Ch. 296 . . . . . SB 81
61-2-302 . . . . . amended . . . . . Ch. 149 . . . . . HB 102
61-3-201 . . . . . amended . . . . . Ch. 209 . . . . . HB 213
61-3-205 . . . . . amended . . . . . Ch. 74 . . . . . HB 399
61-3-211 . . . . . amended . . . . . Ch. 78 . . . . . SB 211
61-3-301 . . . . . amended . . . . . Ch. 209 . . . . . HB 213
amended . . . . . Ch. 231 . . . . . HB 584
61-3-303 . . . . . amended . . . . . Ch. 73 . . . . . HB 367
61-3-312 . . . . . amended . . . . . Ch. 73 . . . . . HB 367
amended . . . . . Ch. 209 . . . . . HB 213
amended . . . . . Ch. 247 . . . . . HB 277
61-3-321 . . . . . amended . . . . . Ch. 209 . . . . . HB 213
amended . . . . . Ch. 247 . . . . . HB 277
amended . . . . . Ch. 278 . . . . . HB 618
amended . . . . . Ch. 326 . . . . . HB 370
61-3-332 . . . . . amended (voided by sec. 2, Ch. 127) . . . . . Ch. 117 . . . . . SB 49
amended . . . . . Ch. 127 . . . . . HB 171
amended . . . . . Ch. 209 . . . . . HB 213
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61-4-129 . . . . . amended . . . . . Ch. 129 . . . . . HB 229
61-5-102 . . . . . amended . . . . . Ch. 209 . . . . . HB 213
61-5-105 . . . . . amended . . . . . Ch. 207 . . . . . HB 178
61-5-111 . . . . . amended . . . . . Ch. 181 . . . . . HB 195
61-5-112 . . . . . amended . . . . . Ch. 296 . . . . . SB 81
61-5-122. . . . . enacted . . . . . Ch. 209 . . . . . HB 213
61-5-125 . . . . . amended . . . . . Ch. 246 . . . . . HB 216
61-5-141. . . . . enacted . . . . . Ch. 296 . . . . . SB 81
61-5-146 . . . . . formerly 61-5-220 . . . . . Ch. 296 . . . . . SB 81
61-5-147 . . . . . formerly 61-5-221 . . . . . Ch. 296 . . . . . SB 81
61-5-205 . . . . . amended . . . . . Ch. 149 . . . . . HB 102
61-5-208 . . . . . amended . . . . . Ch. 149 . . . . . HB 102
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61-5-220 . . . . . renumbered 61-5-146 . . . . . Ch. 296 . . . . . SB 81
61-5-221 . . . . . amended and renumbered 61-5-147 . . . . . Ch. 296 . . . . . SB 81
61-5-231. . . . . enacted . . . . . Ch. 149 . . . . . HB 102
61-5-405 . . . . . amended . . . . . Ch. 235 . . . . . SB 68
61-6-105 . . . . . amended . . . . . Ch. 73 . . . . . HB 367
61-6-157 . . . . . amended . . . . . Ch. 73 . . . . . HB 367
61-6-158 . . . . . amended . . . . . Ch. 209 . . . . . HB 213
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61-6-302 . . . . . amended . . . . . Ch. 73 . . . . . HB 367
61-7-101 . . . . . amended . . . . . Ch. 235 . . . . . SB 68
61-7-103 . . . . . amended . . . . . Ch. 235 . . . . . SB 68
61-7-104 . . . . . repealed . . . . . Ch. 235 . . . . . SB 68
61-7-105 . . . . . amended . . . . . Ch. 235 . . . . . SB 68
61-7-108 . . . . . amended . . . . . Ch. 235 . . . . . SB 68
61-7-118 . . . . . amended . . . . . Ch. 235 . . . . . SB 68
61-8-101 . . . . . amended . . . . . Ch. 282 . . . . . SB 15
61-8-102 . . . . . amended . . . . . Ch. 296 . . . . . SB 81
61-8-310 . . . . . amended . . . . . Ch. 204 . . . . . HB 61

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61-8-378	enacted	Ch. 209	HB	213
61-8-391	enacted	Ch. 247	HB	277
61-8-402	amended	Ch. 282	SB	15
	amended	Ch. 283	SB	42
61-8-404	amended	Ch. 282	SB	15
	amended	Ch. 283	SB	42
61-8-405	amended	Ch. 283	SB	42
61-8-409	amended	Ch. 282	SB	15
	amended	Ch. 283	SB	42
61-8-465	enacted	Ch. 282	SB	15
61-8-714	amended	Ch. 225	HB	12
	amended	Ch. 226	HB	69
	amended	Ch. 282	SB	15
61-8-722	amended	Ch. 225	HB	12
	amended	Ch. 226	HB	69
	amended	Ch. 282	SB	15
61-8-731	amended	Ch. 282	SB	15
61-8-734	amended	Ch. 149	HB	102
	amended	Ch. 282	SB	15
61-8-741	enacted	Ch. 226	HB	69
61-8-801	amended	Ch. 296	SB	81
61-8-803	amended	Ch. 296	SB	81
61-8-812	amended	Ch. 296	SB	81
61-8-903	amended	Ch. 136	HB	401
	amended	Ch. 143	HB	523
61-8-904	amended	Ch. 80	SB	258
	amended	Ch. 143	HB	523
61-8-908	amended	Ch. 143	HB	523
61-8-920	enacted	Ch. 143	HB	523
61-9-220	amended	Ch. 209	HB	213
61-9-416	amended	Ch. 80	SB	258
61-9-420	amended	Ch. 280	SB	319
61-9-423	amended	Ch. 280	SB	319
61-9-432	amended	Ch. 209	HB	213
61-10-102	amended	Ch. 210	HB	251
61-10-104	amended	Ch. 131	HB	298
61-10-124	amended	Ch. 34	HB	210
61-10-141	amended	Ch. 142	HB	517
61-10-214	amended	Ch. 278	HB	618
61-11-101	amended	Ch. 419	SB	423
61-11-102	amended	Ch. 296	SB	81
61-11-105	amended	Ch. 296	SB	81
61-11-203	amended	Ch. 19	SB	31
61-12-101	amended	Ch. 247	HB	277
61-12-314	amended	Ch. 103	HB	254
61-12-501	amended	Ch. 207	HB	178
61-12-502	amended	Ch. 207	HB	178
61-12-503	repealed	Ch. 207	HB	178
61-12-504	amended	Ch. 207	HB	178
61-13-103	amended	Ch. 280	SB	319
69-3-101	amended	Ch. 214	HB	380
69-3-111	amended	Ch. 19	SB	31
69-3-113	enacted	Ch. 321	HB	198
69-3-603	amended	Ch. 69	HB	233
69-3-604	amended	Ch. 60	HB	92
69-3-809	amended	Ch. 263	SB	246
69-3-2003	amended	Ch. 56	HB	78
69-3-2004	amended	Ch. 19	SB	31
69-3-2009	enacted	Ch. 115	SB	7
69-3-2010	enacted	Ch. 115	SB	7
69-5-102	amended	Ch. 120	SB	205
69-5-104	amended	Ch. 19	SB	31

69-5-121 . . . . . enacted . . . . . Ch. 248 . . . . . HB 291
69-5-122 . . . . . enacted . . . . . Ch. 248 . . . . . HB 291
69-5-104(1) . . . . . enacted . . . . . Ch. 120 . . . . . SB 205
69-8-411 . . . . . amended . . . . . Ch. 120 . . . . . SB 205
69-12-101 . . . . . amended . . . . . Ch. 218 . . . . . SB 140
69-12-102 . . . . . amended . . . . . Ch. 218 . . . . . SB 140
69-12-203 . . . . . amended . . . . . Ch. 4 . . . . . HB 60
69-12-328 . . . . . enacted . . . . . Ch. 218 . . . . . SB 140
70-17-203 . . . . . amended . . . . . Ch. 137 . . . . . HB 403
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70-17-211 . . . . . enacted . . . . . Ch. 259 . . . . . SB 146
70-17-212 . . . . . enacted . . . . . Ch. 259 . . . . . SB 146
70-17-303 . . . . . repealed . . . . . Ch. 249 . . . . . HB 295
70-17-401 . . . . . enacted . . . . . Ch. 249 . . . . . HB 295
70-17-402 . . . . . enacted . . . . . Ch. 249 . . . . . HB 295
70-17-403 . . . . . enacted . . . . . Ch. 249 . . . . . HB 295
70-17-404 . . . . . enacted . . . . . Ch. 249 . . . . . HB 295
70-17-405 . . . . . enacted . . . . . Ch. 249 . . . . . HB 295
70-17-406 . . . . . enacted . . . . . Ch. 249 . . . . . HB 295
70-17-407 . . . . . enacted . . . . . Ch. 249 . . . . . HB 295
70-17-408 . . . . . enacted . . . . . Ch. 249 . . . . . HB 295
70-23-102 . . . . . amended . . . . . Ch. 373 . . . . . HB 460
70-23-103 . . . . . amended . . . . . Ch. 373 . . . . . HB 460
70-23-301 . . . . . amended . . . . . Ch. 373 . . . . . HB 460
70-27-111 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
72-1-206 . . . . . amended . . . . . Ch. 238 . . . . . SB 337
72-1-310 . . . . . enacted . . . . . Ch. 238 . . . . . SB 337
72-1-311 . . . . . enacted . . . . . Ch. 238 . . . . . SB 337
72-1-312 . . . . . enacted . . . . . Ch. 238 . . . . . SB 337
72-3-109 . . . . . enacted . . . . . Ch. 238 . . . . . SB 337
72-3-401 . . . . . amended . . . . . Ch. 238 . . . . . SB 337
72-3-916 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
72-3-917 . . . . . amended . . . . . Ch. 109 . . . . . HB 374
72-5-402 . . . . . amended . . . . . Ch. 329 . . . . . HB 518
72-5-501 . . . . . amended . . . . . Ch. 109 . . . . . HB 374
72-5-502 . . . . . amended . . . . . Ch. 109 . . . . . HB 374
72-6-121 . . . . . amended . . . . . Ch. 76 . . . . . SB 19
72-31-201 . . . . . repealed . . . . . Ch. 109 . . . . . HB 374
72-31-222 . . . . amended and renumbered 72-31-304 . . . . . Ch. 109 . . . . . HB 374
72-31-223 . . . . amended and renumbered 72-31-338 . . . . . Ch. 109 . . . . . HB 374
72-31-224 . . . . amended and renumbered 72-31-339 . . . . . Ch. 109 . . . . . HB 374
72-31-225 . . . . amended and renumbered 72-31-340 . . . . . Ch. 109 . . . . . HB 374
72-31-226 . . . . amended and renumbered 72-31-341 . . . . . Ch. 109 . . . . . HB 374
72-31-227 . . . . amended and renumbered 72-31-342 . . . . . Ch. 109 . . . . . HB 374
72-31-228 . . . . amended and renumbered 72-31-343 . . . . . Ch. 109 . . . . . HB 374
72-31-229 . . . . amended and renumbered 72-31-344 . . . . . Ch. 109 . . . . . HB 374
72-31-230 . . . . amended and renumbered 72-31-345 . . . . . Ch. 109 . . . . . HB 374
72-31-231 . . . . amended and renumbered 72-31-346 . . . . . Ch. 109 . . . . . HB 374
72-31-232 . . . . amended and renumbered 72-31-347 . . . . . Ch. 109 . . . . . HB 374
72-31-233 . . . . amended and renumbered 72-31-348 . . . . . Ch. 109 . . . . . HB 374
72-31-234 . . . . amended and renumbered 72-31-349 . . . . . Ch. 109 . . . . . HB 374
72-31-235 . . . . amended and renumbered 72-31-350 . . . . . Ch. 109 . . . . . HB 374
72-31-236 . . . . amended and renumbered 72-31-351 . . . . . Ch. 109 . . . . . HB 374
72-31-237 . . . . . repealed . . . . . Ch. 109 . . . . . HB 374
72-31-238 . . . . amended and renumbered 72-31-365 . . . . . Ch. 109 . . . . . HB 374
72-31-301 . . . . . enacted . . . . . Ch. 109 . . . . . HB 374
72-31-302 . . . . . enacted . . . . . Ch. 109 . . . . . HB 374
72-31-303 . . . . . enacted . . . . . Ch. 109 . . . . . HB 374
72-31-304 . . . . . formerly 72-31-222 . . . . . Ch. 109 . . . . . HB 374
72-31-305 . . . . . enacted . . . . . Ch. 109 . . . . . HB 374
72-31-306 . . . . . enacted . . . . . Ch. 109 . . . . . HB 374
72-31-307 . . . . . enacted . . . . . Ch. 109 . . . . . HB 374

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72-31-309	enacted	Ch. 109	HB	374
72-31-310	enacted	Ch. 109	HB	374
72-31-316	enacted	Ch. 109	HB	374
72-31-317	enacted	Ch. 109	HB	374
72-31-318	enacted	Ch. 109	HB	374
72-31-319	enacted	Ch. 109	HB	374
72-31-320	enacted	Ch. 109	HB	374
72-31-321	enacted	Ch. 109	HB	374
72-31-322	enacted	Ch. 109	HB	374
72-31-323	enacted	Ch. 109	HB	374
72-31-324	enacted	Ch. 109	HB	374
72-31-325	enacted	Ch. 109	HB	374
72-31-326	enacted	Ch. 109	HB	374
72-31-327	enacted	Ch. 109	HB	374
72-31-328	enacted	Ch. 109	HB	374
72-31-336	enacted	Ch. 109	HB	374
72-31-337	enacted	Ch. 109	HB	374
72-31-338	formerly 72-31-223	Ch. 109	HB	374
72-31-339	formerly 72-31-224	Ch. 109	HB	374
72-31-340	formerly 72-31-225	Ch. 109	HB	374
72-31-341	formerly 72-31-226	Ch. 109	HB	374
72-31-342	formerly 72-31-227	Ch. 109	HB	374
72-31-343	formerly 72-31-228	Ch. 109	HB	374
72-31-344	formerly 72-31-229	Ch. 109	HB	374
72-31-345	formerly 72-31-230	Ch. 109	HB	374
72-31-346	formerly 72-31-231	Ch. 109	HB	374
72-31-347	formerly 72-31-232	Ch. 109	HB	374
72-31-348	formerly 72-31-233	Ch. 109	HB	374
72-31-349	formerly 72-31-234	Ch. 109	HB	374
72-31-350	formerly 72-31-235	Ch. 109	HB	374
72-31-351	formerly 72-31-236	Ch. 109	HB	374
72-31-352	enacted	Ch. 109	HB	374
72-31-353	enacted	Ch. 109	HB	374
72-31-354	enacted	Ch. 109	HB	374
72-31-365	formerly 72-31-238	Ch. 109	HB	374
72-31-366	enacted	Ch. 109	HB	374
72-31-367	enacted	Ch. 109	HB	374
72-34-441	amended	Ch. 285	SB	333
72-34-452	amended	Ch. 285	SB	333
75-1-102	amended	Ch. 396	SB	233
75-1-201	amended	Ch. 396	SB	233
75-1-203	amended	Ch. 396	SB	233
75-1-207	amended	Ch. 19	SB	31
75-1-208	amended	Ch. 396	SB	233
75-1-220	amended	Ch. 396	SB	233
75-2-111	amended	Ch. 94	SB	47
75-5-103	amended	Ch. 267	SB	367
	amended	Ch. 398	SB	292
75-5-105	amended	Ch. 267	SB	367
75-5-313	amended	Ch. 267	SB	367
75-5-314	enacted	Ch. 267	SB	367
75-5-703	amended	Ch. 302	SB	267
75-5-1107	amended	Ch. 297	SB	87
75-6-102	amended	Ch. 85	HB	52
75-6-103	amended	Ch. 85	HB	52
75-6-107	amended	Ch. 213	HB	352
75-6-212	amended	Ch. 297	SB	87
75-6-305	amended	Ch. 13	HB	101
75-7-123	amended	Ch. 284	SB	238
75-10-112	amended	Ch. 196	SB	236
75-10-532	amended	Ch. 312	HB	604
75-10-722	amended	Ch. 257	SB	30

75-10-743 . . . . . amended . . . . . Ch. 312 . . . . . HB 604
75-11-307 . . . . . amended . . . . . Ch. 189 . . . . . SB 9
75-11-309 . . . . . amended . . . . . Ch. 189 . . . . . SB 9
75-11-503 . . . . . amended . . . . . Ch. 189 . . . . . SB 9
75-11-505 . . . . . amended . . . . . Ch. 189 . . . . . SB 9
75-11-508. . . . . enacted . . . . . Ch. 189 . . . . . SB 9
75-11-521. . . . . enacted . . . . . Ch. 394 . . . . . HB 613
75-15-103 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
75-20-102 . . . . . amended . . . . . Ch. 224 . . . . . SB 320
75-20-104 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
amended . . . . . Ch. 224 . . . . . SB 320
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75-20-113. . . . . enacted . . . . . Ch. 321 . . . . . HB 198
75-20-201 . . . . . amended . . . . . Ch. 309 . . . . . SB 172
75-20-301 . . . . . amended . . . . . Ch. 382 . . . . . SB 206
75-20-303 . . . . . amended . . . . . Ch. 382 . . . . . SB 206
76-2-303 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
76-2-305 . . . . . amended . . . . . Ch. 88 . . . . . HB 181
76-3-103 . . . . . amended . . . . . Ch. 214 . . . . . HB 380
76-3-203 . . . . . amended . . . . . Ch. 373 . . . . . HB 460
76-3-509 . . . . . amended . . . . . Ch. 137 . . . . . HB 403
76-3-608 . . . . . amended . . . . . Ch. 409 . . . . . SB 298
76-3-610 . . . . . amended . . . . . Ch. 252 . . . . . HB 522
76-4-104 . . . . . amended . . . . . Ch. 83 . . . . . HB 28
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76-4-125 . . . . . amended . . . . . Ch. 217 . . . . . SB 89
76-5-206. . . . . repealed . . . . . Ch. 23 . . . . . HB 76
76-5-207. . . . . repealed . . . . . Ch. 23 . . . . . HB 76
76-5-208 . . . . . amended . . . . . Ch. 23 . . . . . HB 76
76-5-405 . . . . . amended . . . . . Ch. 23 . . . . . HB 76
76-13-150 . . . . . amended . . . . . Ch. 312 . . . . . HB 604
76-13-410 . . . . . amended . . . . . Ch. 61 . . . . . HB 93
76-13-416. . . . . enacted . . . . . Ch. 61 . . . . . HB 93
76-15-301 . . . . . amended . . . . . Ch. 162 . . . . . HB 430
76-15-311 . . . . . amended . . . . . Ch. 162 . . . . . HB 430
76-15-312 . . . . . amended . . . . . Ch. 162 . . . . . HB 430
76-15-904 . . . . . amended . . . . . Ch. 312 . . . . . HB 604
77-1-101 . . . . . amended . . . . . Ch. 93 . . . . . SB 38
77-1-102 . . . . . amended . . . . . Ch. 371 . . . . . HB 165
77-1-103 . . . . . amended . . . . . Ch. 371 . . . . . HB 165
77-1-117 . . . . . amended . . . . . Ch. 413 . . . . . SB 100
77-1-121 . . . . . amended . . . . . Ch. 359 . . . . . SB 35
77-1-130 . . . . . amended . . . . . Ch. 325 . . . . . HB 297
77-1-134 . . . . . amended . . . . . Ch. 359 . . . . . SB 35
77-1-208 . . . . . amended . . . . . Ch. 401 . . . . . SB 409
77-1-220 . . . . . amended . . . . . Ch. 362 . . . . . SB 410
77-1-228. . . . . enacted . . . . . Ch. 362 . . . . . SB 410
77-1-229. . . . . enacted . . . . . Ch. 362 . . . . . SB 410
77-1-235. . . . . enacted . . . . . Ch. 401 . . . . . SB 409
77-1-236. . . . . enacted . . . . . Ch. 401 . . . . . SB 409
77-1-804 . . . . . amended . . . . . Ch. 62 . . . . . HB 98
77-1-1109. . . . . enacted . . . . . Ch. 359 . . . . . SB 035
77-1-1110. . . . . enacted . . . . . Ch. 359 . . . . . SB 035
77-1-1111. . . . . enacted . . . . . Ch. 359 . . . . . SB 035
77-1-1112. . . . . enacted . . . . . Ch. 359 . . . . . SB 035
77-1-1113. . . . . enacted . . . . . Ch. 359 . . . . . SB 035
77-1-1114. . . . . enacted . . . . . Ch. 359 . . . . . SB 035
77-1-1115. . . . . enacted . . . . . Ch. 359 . . . . . SB 035
77-1-1116. . . . . enacted . . . . . Ch. 359 . . . . . SB 035
77-1-1117. . . . . enacted . . . . . Ch. 359 . . . . . SB 035
77-2-101 . . . . . amended . . . . . Ch. 359 . . . . . SB 35
77-2-103 . . . . . amended . . . . . Ch. 141 . . . . . HB 481

77-2-318 . . . . . amended . . . . . Ch. 401 . . . . . SB 409
77-2-319 . . . . . repealed . . . . . Ch. 401 . . . . . SB 409
77-2-351 . . . . . amended . . . . . Ch. 141 . . . . . HB 481
77-3-305 . . . . . amended . . . . . Ch. 332 . . . . . HB 533
77-3-312 . . . . . amended . . . . . Ch. 332 . . . . . HB 533
77-3-313 . . . . . amended . . . . . Ch. 332 . . . . . HB 533
77-3-314 . . . . . amended . . . . . Ch. 332 . . . . . HB 533
77-3-316 . . . . . amended . . . . . Ch. 332 . . . . . HB 533
77-3-322 . . . . . enacted . . . . . Ch. 243 . . . . . HB 107
77-3-323 . . . . . enacted . . . . . Ch. 243 . . . . . HB 107
77-4-208 . . . . . amended . . . . . Ch. 371 . . . . . HB 165
80-4-402 . . . . . amended . . . . . Ch. 175 . . . . . SB 74
80-4-405 . . . . . amended . . . . . Ch. 175 . . . . . SB 74
80-4-421 . . . . . amended . . . . . Ch. 175 . . . . . SB 74
80-4-502 . . . . . amended . . . . . Ch. 175 . . . . . SB 74
80-4-505 . . . . . amended . . . . . Ch. 175 . . . . . SB 74
80-4-506 . . . . . amended . . . . . Ch. 175 . . . . . SB 74
80-4-601 . . . . . amended . . . . . Ch. 175 . . . . . SB 74
80-4-604 . . . . . amended . . . . . Ch. 175 . . . . . SB 74
80-5-126 . . . . . amended . . . . . Ch. 300 . . . . . SB 195
80-5-128 . . . . . amended . . . . . Ch. 300 . . . . . SB 195
80-5-139 . . . . . amended . . . . . Ch. 300 . . . . . SB 195
80-5-601 . . . . . enacted . . . . . Ch. 260 . . . . . SB 218
80-5-602 . . . . . enacted . . . . . Ch. 260 . . . . . SB 218
80-5-603 . . . . . enacted . . . . . Ch. 260 . . . . . SB 218
80-5-604 . . . . . enacted . . . . . Ch. 260 . . . . . SB 218
80-5-605 . . . . . enacted . . . . . Ch. 260 . . . . . SB 218
80-5-606 . . . . . enacted . . . . . Ch. 260 . . . . . SB 218
80-7-106 . . . . . amended . . . . . Ch. 341 . . . . . SB 126
80-7-108 . . . . . amended . . . . . Ch. 341 . . . . . SB 126
80-7-404 . . . . . amended . . . . . Ch. 303 . . . . . SB 296
80-7-814 . . . . . amended (voided by sec. 12, Ch. 244) . . . . . Ch. 128 . . . . . HB 212
amended . . . . . Ch. 244 . . . . . HB 166
80-7-1002 . . . . . amended . . . . . Ch. 378 . . . . . HB 621
80-7-1003 . . . . . amended . . . . . Ch. 378 . . . . . HB 621
80-7-1005 . . . . . amended . . . . . Ch. 378 . . . . . HB 621
80-7-1006 . . . . . amended . . . . . Ch. 378 . . . . . HB 621
80-7-1007 . . . . . amended . . . . . Ch. 378 . . . . . HB 621
80-7-1008 . . . . . amended . . . . . Ch. 378 . . . . . HB 621
80-7-1011 . . . . . amended . . . . . Ch. 378 . . . . . HB 621
81-1-101 . . . . . amended . . . . . Ch. 403 . . . . . SB 207
81-1-102 . . . . . amended . . . . . Ch. 417 . . . . . SB 277
81-1-110 . . . . . amended . . . . . Ch. 229 . . . . . HB 469
amended . . . . . Ch. 339 . . . . . HB 622
81-1-112 . . . . . enacted . . . . . Ch. 339 . . . . . HB 622
81-2-102 . . . . . amended . . . . . Ch. 5 . . . . . HB 54
81-2-115 . . . . . enacted . . . . . Ch. 16 . . . . . HB 294
81-2-120 . . . . . amended . . . . . Ch. 403 . . . . . SB 207
81-2-121 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
amended . . . . . Ch. 403 . . . . . SB 207
81-3-201 . . . . . amended . . . . . Ch. 403 . . . . . SB 207
81-4-603 . . . . . amended . . . . . Ch. 403 . . . . . SB 207
81-5-101 . . . . . amended . . . . . Ch. 403 . . . . . SB 207
81-5-104 . . . . . amended . . . . . Ch. 403 . . . . . SB 207
81-5-121 . . . . . enacted . . . . . Ch. 403 . . . . . SB 207
81-7-103 . . . . . amended . . . . . Ch. 339 . . . . . HB 622
81-7-104 . . . . . amended . . . . . Ch. 339 . . . . . HB 622
81-7-106 . . . . . enacted . . . . . Ch. 339 . . . . . HB 622
81-8-901 . . . . . amended . . . . . Ch. 417 . . . . . SB 277
81-8-902 . . . . . amended . . . . . Ch. 417 . . . . . SB 277
82-4-203 . . . . . amended . . . . . Ch. 398 . . . . . SB 292
amended . . . . . Ch. 408 . . . . . SB 297
82-4-207 . . . . . enacted . . . . . Ch. 398 . . . . . SB 292

82-4-226 . . . . . amended . . . . . Ch. 407 . . . . . SB 286
82-4-235 . . . . . amended . . . . . Ch. 84 . . . . . HB 37
82-4-303 . . . . . amended . . . . . Ch. 410 . . . . . SB 312
82-4-305 . . . . . amended . . . . . Ch. 410 . . . . . SB 312
82-4-335 . . . . . amended . . . . . Ch. 145 . . . . . HB 422
amended . . . . . Ch. 410 . . . . . SB 312
82-4-337 . . . . . amended . . . . . Ch. 410 . . . . . SB 312
82-4-342 . . . . . amended . . . . . Ch. 410 . . . . . SB 312
82-4-353 . . . . . amended . . . . . Ch. 410 . . . . . SB 312
82-11-111 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
82-11-135 . . . . . amended . . . . . Ch. 312 . . . . . HB 604
82-11-138. . . . . enacted . . . . . Ch. 184 . . . . . HB 479
82-11-183 . . . . . amended . . . . . Ch. 264 . . . . . SB 285
85-1-211 . . . . . amended . . . . . Ch. 144 . . . . . HB 568
85-1-501 . . . . . amended . . . . . Ch. 275 . . . . . SB 327
85-2-102 . . . . . amended . . . . . Ch. 29 . . . . . HB 24
85-2-125 . . . . . amended . . . . . Ch. 360 . . . . . SB 36
85-2-301 . . . . . amended . . . . . Ch. 112 . . . . . HB 497
85-2-306 . . . . . amended . . . . . Ch. 96 . . . . . SB 103
amended . . . . . Ch. 97 . . . . . SB 128
85-2-310 . . . . . amended . . . . . Ch. 29 . . . . . HB 24
85-2-402 . . . . . amended . . . . . Ch. 29 . . . . . HB 24
85-2-420. . . . . enacted . . . . . Ch. 29 . . . . . HB 24
85-2-436 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
85-7-1436 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
85-7-1437 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
85-7-2013 . . . . . amended . . . . . Ch. 164 . . . . . HB 498
85-7-2014 . . . . . amended . . . . . Ch. 164 . . . . . HB 498
85-7-2016 . . . . . amended . . . . . Ch. 164 . . . . . HB 498
85-7-2022 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
85-7-2023 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
85-7-2032 . . . . . amended . . . . . Ch. 164 . . . . . HB 498
85-7-2033 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
85-8-503 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
85-9-625 . . . . . amended . . . . . Ch. 253 . . . . . HB 538
85-20-1007 . . . . . amended . . . . . Ch. 47 . . . . . HB 58
85-20-1504 . . . . . amended . . . . . Ch. 57 . . . . . HB 79
85-20-1505 . . . . . amended . . . . . Ch. 147 . . . . . HB 49
85-20-1511. . . . . enacted . . . . . Ch. 147 . . . . . HB 49
87-1-102. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-108. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-109. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-110. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-111 . . . . amended (voided by sec. 129, Ch. 258) . . . . . Ch. 250 . . . . . HB 336
repealed . . . . . Ch. 258 . . . . . SB 124
87-1-112. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-113. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-114. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-115 . . . . amended (voided by sec. 130, Ch. 258) . . . . . Ch. 250 . . . . . HB 336
repealed . . . . . Ch. 258 . . . . . SB 124
87-1-120 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-1-121. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-125. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-201 . . . . . amended . . . . . Ch. 370 . . . . . HB 159
amended . . . . . Ch. 395 . . . . . HB 619
87-1-208. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-214. . . . . enacted . . . . . Ch. 178 . . . . . SB 115
87-1-216 . . . . . amended . . . . . Ch. 383 . . . . . SB 212
amended . . . . . Ch. 403 . . . . . SB 207
87-1-217 . . . . . amended . . . . . Ch. 71 . . . . . HB 287
amended . . . . . Ch. 414 . . . . . SB 108
87-1-231. . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-1-232 . . . . . amended . . . . . Ch. 258 . . . . . SB 124

87-1-234 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-1-271 . . . . . amended . . . . . Ch. 298 . . . . . SB 99
87-1-290 . . . . . amended . . . . . Ch. 415 . . . . . SB 136
87-1-301 . . . . . amended . . . . . Ch. 174 . . . . . HB 566
amended . . . . . Ch. 254 . . . . . HB 541
amended . . . . . Ch. 370 . . . . . HB 159
amended . . . . . Ch. 391 . . . . . HB 372
87-1-303 . . . . . amended . . . . . Ch. 254 . . . . . HB 541
amended . . . . . Ch. 370 . . . . . HB 159
87-1-304 . . . . . amended . . . . . Ch. 221 . . . . . SB 184
amended . . . . . Ch. 292 . . . . . HB 172
amended . . . . . Ch. 370 . . . . . HB 159
87-1-513 . . . . . amended . . . . . Ch. 134 . . . . . HB 337
87-1-601 . . . . . amended . . . . . Ch. 62 . . . . . HB 98
amended . . . . . Ch. 258 . . . . . SB 124
amended . . . . . Ch. 390 . . . . . HB 363
87-1-621 . . . . . amended . . . . . Ch. 395 . . . . . HB 619
87-1-622. . . . . enacted . . . . . Ch. 395 . . . . . HB 619
87-1-623. . . . . enacted . . . . . Ch. 390 . . . . . HB 363
87-1-625. . . . . enacted . . . . . Ch. 400 . . . . . SB 348
87-1-803 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-1-804 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-2-101 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
amended (voided by sec. 122, Ch. 258) . . . . . Ch. 134 . . . . . HB 337
amended . . . . . Ch. 258 . . . . . SB 124
87-2-103 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
amended (voided by sec. 2, Ch. 316) . . . . . Ch. 316 . . . . . HB 47
87-2-104 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-2-106 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-2-109 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-2-110 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-2-112 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-2-114 . . . . . amended . . . . . Ch. 134 . . . . . HB 337
repealed . . . . . Ch. 258 . . . . . SB 124
87-2-115. . . . . enacted . . . . . Ch. 391 . . . . . HB 372
87-2-120 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-2-202 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-2-203 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-2-205 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-2-311. . . . . enacted . . . . . Ch. 316 . . . . . HB 47
87-2-411 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-2-509 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-2-511 . . . . . amended . . . . . Ch. 336 . . . . . HB 607
87-2-514 . . . . . amended . . . . . Ch. 415 . . . . . SB 136
87-2-515 . . . . . amended . . . . . Ch. 415 . . . . . SB 136
87-2-521 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-2-522 . . . . . amended . . . . . Ch. 183 . . . . . HB 339
87-2-523 . . . . . amended . . . . . Ch. 390 . . . . . HB 363
87-2-524 . . . . . amended . . . . . Ch. 390 . . . . . HB 363
87-2-604 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-2-701 . . . . . amended . . . . . Ch. 292 . . . . . HB 172
87-2-706 . . . . . amended . . . . . Ch. 68 . . . . . HB 176
87-2-730 . . . . . amended . . . . . Ch. 221 . . . . . SB 184
87-2-731 . . . . . amended . . . . . Ch. 221 . . . . . SB 184
87-2-804 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-2-807 . . . . amended (voided by sec. 122, Ch. 258) . . . . . Ch. 134 . . . . . HB 337
amended . . . . . Ch. 258 . . . . . SB 124
87-2-903 . . . . . amended . . . . . Ch. 298 . . . . . SB 99
87-3-101 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-102 . . . . amended (voided by sec. 124, Ch. 258) . . . . . Ch. 250 . . . . . HB 336
repealed . . . . . Ch. 258 . . . . . SB 124
87-3-103 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-104 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124

87-3-105 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-107 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-108 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-109 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-110 . . . . . repealed . . . . . Ch. 113 . . . . . HB 536
amended . . . . . Ch. 258 . . . . . SB 124
87-3-111 . . . . amended (voided by sec. 123, Ch. 258) . . . . . Ch. 113 . . . . . HB 536
repealed . . . . . Ch. 258 . . . . . SB 124
87-3-112 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-116 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-117 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-118 . . . . amended (voided by sec. 125, Ch. 258) . . . . . Ch. 113 . . . . . HB 536
repealed . . . . . Ch. 258 . . . . . SB 124
87-3-121 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-3-123 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-124 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
amended (voided by sec. 127, Ch. 258) . . . . . Ch. 272 . . . . . SB 135
87-3-125 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-126 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-3-130 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-134 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-135 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-141 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-142 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-143 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-144 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-204 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-3-205 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-206 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-207 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-209 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-221 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-3-222 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-3-224 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-3-236 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
87-3-301 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
amended . . . . . Ch. 370 . . . . . HB 159
87-3-302 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-304 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-305 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-306 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-307 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-401 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-402 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-403 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-3-404 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-405 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-501 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-503 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-504 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-505 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-3-506 . . . . amended (voided by sec. 128, Ch. 258) . . . . . Ch. 250 . . . . . HB 336
repealed . . . . . Ch. 258 . . . . . SB 124
87-3-507 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-4-201 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-306 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-407 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-427 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-529 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-4-601 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-608 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-4-609 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-803 . . . . . amended . . . . . Ch. 258 . . . . . SB 124

87-4-807 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-903 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-915 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-1002 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-4-1014 . . . . . repealed . . . . . Ch. 258 . . . . . SB 124
87-5-132 . . . . . amended . . . . . Ch. 390 . . . . . HB 363
amended . . . . . Ch. 400 . . . . . SB 348
87-5-204 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-5-208 . . . . . amended . . . . . Ch. 118 . . . . . SB 92
87-5-301 . . . . . amended . . . . . Ch. 292 . . . . . HB 172
amended . . . . . Ch. 416 . . . . . SB 143
87-5-302 . . . . . amended . . . . . Ch. 292 . . . . . HB 172
87-5-703 . . . . . amended . . . . . Ch. 258 . . . . . SB 124
87-5-714 . . . . . amended . . . . . Ch. 19 . . . . . SB 31
87-5-721 . . . . . amended . . . . . Ch. 139 . . . . . HB 449
amended . . . . . Ch. 258 . . . . . SB 124
87-6-101 . . . . . enacted and amended . . . . . Ch. 258 . . . . . SB 124
87-6-102 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-103 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-104 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-105 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-106 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-201 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-202 . . . . . enacted and amended . . . . . Ch. 258 . . . . . SB 124
87-6-203 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-204 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-205 . . . . . enacted and amended . . . . . Ch. 258 . . . . . SB 124
87-6-206 . . . . . enacted and amended . . . . . Ch. 258 . . . . . SB 124
87-6-207 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-214 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-215 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-216 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-217 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-218 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-219 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-220 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-301 . . . . . enacted and amended . . . . . Ch. 258 . . . . . SB 124
amended . . . . . Ch. 316 . . . . . HB 47
87-6-302 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-303 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-304 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-305 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-306 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-310 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-311 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-312 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-313 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-314 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-401 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-402 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-403 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-404 . . . . . enacted and amended . . . . . Ch. 258 . . . . . SB 124
87-6-405 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-406 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-410 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-411 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-412 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-413 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-414 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-415 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-501 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-601 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-602 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124

87-6-603 . . . . . enacted and amended . . . . . Ch. 258 . . . . . SB 124
87-6-701 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-702 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-703 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-704 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-705 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-706 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-707 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-713 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-714 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-715 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-716 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-717 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-718 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-801 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-901 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-902 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-903 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-904 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-905 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-906 . . . . . enacted and amended . . . . . Ch. 258 . . . . . SB 124
87-6-907 . . . . . enacted and amended . . . . . Ch. 258 . . . . . SB 124
87-6-908 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-914 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-915 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
87-6-916 . . . . . enacted . . . . . Ch. 258 . . . . . SB 124
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90-4-605 . . . . . amended . . . . . Ch. 240 . . . . . HB 51
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90-8-102 . . . . . repealed . . . . . Ch. 9 . . . . . HB 44
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90-8-303	repealed	Ch.	9	HB 44
90-8-304	repealed	Ch.	9	HB 44
90-8-305	repealed	Ch.	9	HB 44
90-8-311	repealed	Ch.	9	HB 44
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90-8-313	repealed	Ch.	9	HB 44
90-8-321	repealed	Ch.	9	HB 44

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Laws of 1997			
Ch. 461, sec. 5	amended	325	HB 297
Laws of 1999			
Ch. 495, sec. 6	amended	389	HB 351
Laws of 2001			
Ch. 70, sec. 1	amended	389	HB 351
Ch. 70, sec. 2	repealed	389	HB 351
Ch. 270, sec. 6	amended	325	HB 297
Laws of 2005			
Ch. 57, sec. 2, 3, 4	amended	325	HB 297
Special Laws of May 2007			
Ch. 3, sec. 14, 16	amended	368	HB 10
Ch. 3, sec. 2	amended	387	HB 5
Laws of 2009			
Ch. 72, sec. 2	repealed	84	HB 37
Ch. 330, sec. 8	amended	19	SB 31
Ch. 361, sec. 20	repealed	188	SB 5
Ch. 435, sec. 2	amended	368	HB 10
Ch. 437, sec. 12	repealed	323	HB 262
Ch. 478, sec. 2, 6	amended	387	HB 5
Ch. 486, sec. 32	amended	371	HB 165

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EFFECTIVE DATES BY CHAPTER NUMBER

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Ch. 1	HB 1	01/31/2011
Ch. 2	HB 22	07/01/2011
Ch. 3	HB 21	10/01/2011
Ch. 4	HB 60	10/01/2011
Ch. 5	HB 54	03/11/2011
Ch. 6	HB 89	10/01/2011
Ch. 7	HB 19	03/16/2011
Ch. 8	HB 38	03/16/2011
Ch. 9	HB 44	10/01/2011
Ch. 10	HB 57	10/01/2011
Ch. 11	HB 74	03/16/2011
Ch. 12	HB 84	10/01/2011
Ch. 13	HB 101	07/01/2011
Ch. 14	HB 204	10/01/2011
Ch. 15	HB 208	03/16/2011
Ch. 16	HB 294	10/01/2011
Ch. 17	SB 21	07/01/2011
Ch. 18	SB 27	07/01/2011
Ch. 19	SB 31	10/01/2011
Ch. 20	SB 62	03/16/2011
Ch. 21	SB 72	10/01/2011
Ch. 22	HB 39	10/01/2011
Ch. 23	HB 76	03/18/2011
Ch. 24	HB 97	07/01/2011
Ch. 25	HB 182	03/18/2011
Ch. 26	SB 63	10/01/2011
Ch. 27	SB 78	03/18/2011
Ch. 28	HB 17	10/01/2011
Ch. 29	HB 24	10/01/2011
Ch. 30	HB 65	10/01/2011
Ch. 31	HB 96	10/01/2011
Ch. 32	HB 114	10/01/2011
Ch. 33	HB 156	03/23/2011
Ch. 34	HB 210	10/01/2011
Ch. 35	HB 263	10/01/2011
Ch. 36	HB 359	03/23/2011
Ch. 37	SB 26	10/01/2011
Ch. 38	SB 41	07/01/2011
Ch. 39	SB 46	10/01/2011
Ch. 40	SB 51	03/23/2011
Ch. 41	SB 53	03/23/2011
Ch. 42	SB 60	10/01/2011
Ch. 43	SB 65	03/23/2011
Ch. 44	SB 73	10/01/2011
Ch. 45	SB 95	10/01/2011
Ch. 46	SB 152	10/01/2011
Ch. 47	HB 58	03/24/2011
Ch. 48	HB 268	10/01/2011
Ch. 49	SB 64	10/01/2011
Ch. 50	SB 69	03/18/2012
Ch. 51	SB 165	10/01/2011
Ch. 52	SB 186	03/24/2011
Ch. 53	HB 23	03/25/2011
Ch. 54	HB 53	10/01/2011
Ch. 55	HB 62	03/25/2011
Ch. 56	HB 78	03/25/2011
Ch. 57	HB 79	03/25/2011
Ch. 58	HB 81	03/25/2011
Ch. 59	HB 86	07/01/2011

Ch.	60		HB	92	03/25/2011
Ch.	61		HB	93	07/01/2011
Ch.	62		HB	98	03/25/2011
Ch.	63		HB	118	03/25/2011
Ch.	64		HB	119	07/01/2011
Ch.	65		HB	120	10/01/2011
Ch.	66		HB	127	10/01/2011
Ch.	67	§§ 1, 2(1), and 3-5	HB	169	03/25/2011
		§ 2(2)			Effective on the date the secretary of state notifies the code commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed.
Ch.	68		HB	176	03/25/2011
Ch.	69		HB	233	03/25/2011
Ch.	70		HB	252	10/01/2011
Ch.	71		HB	287	10/01/2011
Ch.	72		HB	356	10/01/2011
Ch.	73		HB	367	03/25/2011
Ch.	74		HB	399	03/25/2011
Ch.	75		HB	419	10/01/2011
Ch.	76		SB	19	10/01/2011
Ch.	77		SB	203	03/25/2011
Ch.	78		SB	211	10/01/2011
Ch.	79		SB	256	10/01/2011
Ch.	80		SB	258	10/01/2011
Ch.	81		SB	289	10/01/2011
Ch.	82		SB	335	07/01/2011
Ch.	83		HB	28	03/30/2011
Ch.	84		HB	37	03/30/2011
Ch.	85		HB	52	10/01/2011
Ch.	86		HB	63	03/30/2011
Ch.	87		HB	126	10/01/2011
Ch.	88		HB	181	03/30/2011
Ch.	89		HB	255	10/01/2011
Ch.	90		HB	426	10/01/2011
Ch.	91		SB	32	03/30/2011
Ch.	92		SB	34	03/30/2011
Ch.	93		SB	38	07/01/2011
Ch.	94		SB	47	03/30/2011
Ch.	95		SB	67	03/30/2011
Ch.	96		SB	103	10/01/2011
Ch.	97		SB	128	10/01/2011
Ch.	98		SB	342	10/01/2011
Ch.	99		HB	70	07/01/2011
Ch.	100		HB	94	10/01/2011
Ch.	101		HB	99	01/01/2012
Ch.	102		HB	141	07/01/2011
Ch.	103		HB	254	04/01/2011
Ch.	104		HB	259	10/01/2011
Ch.	105		HB	270	04/01/2011
Ch.	106		HB	273	10/01/2011
Ch.	107		HB	293	04/01/2011
Ch.	108		HB	348	04/01/2011
Ch.	109		HB	374	10/01/2011
Ch.	110		HB	428	04/01/2011
Ch.	111		HB	484	04/01/2011
Ch.	112		HB	497	10/01/2011
Ch.	113		HB	536	04/01/2011
Ch.	114		HB	573	07/01/2011
Ch.	115		SB	7	04/01/2011

Ch.	116	SB	12	04/01/2011
Ch.	117	SB	49	01/01/2012
Ch.	118	SB	92	10/01/2011
Ch.	119	SB	189	10/01/2011
Ch.	120	SB	205	04/01/2011
Ch.	121	SB	361	04/01/2011
Ch.	122	HB	25	10/01/2011
Ch.	123	HB	80	10/01/2011
Ch.	124	HB	82	04/07/2011
Ch.	125	HB	117	10/01/2011
Ch.	126	HB	142	10/01/2011
Ch.	127	HB	171	01/01/2012
Ch.	128	HB	212	07/01/2011
Ch.	129	HB	229	10/01/2011
Ch.	130	HB	250	04/07/2011
Ch.	131	HB	298	10/01/2011
Ch.	132	HB	319	10/01/2011
Ch.	133	HB	324	04/07/2011
Ch.	134	HB	337	10/01/2011
Ch.	135	HB	338	10/01/2011
Ch.	136	HB	401	10/01/2011
Ch.	137	HB	403	07/01/2011
Ch.	138	HB	432	10/01/2011
Ch.	139	HB	449	10/01/2011
Ch.	140	HB	467	10/01/2011
Ch.	141	HB	481	10/01/2011
Ch.	142	HB	517	10/01/2011
Ch.	143	HB	523	10/01/2011
Ch.	144	HB	568	04/07/2011
Ch.	145	HB	422	04/07/2011
Ch.	146	HB	41	10/01/2011
Ch.	147	HB	49	04/08/2011
Ch.	148	HB	77	10/01/2011
Ch.	149	HB	102	10/01/2011
Ch.	150	HB	110	07/01/2011
Ch.	151	HB	116	07/01/2011
Ch.	152	HB	123	04/10/2011
Ch.	153	HB	131	10/01/2011
Ch.	154	HB	134	07/01/2011
Ch.	155	HB	135	07/01/2011
Ch.	156	HB	185	04/08/2011
Ch.	157	HB	225	04/08/2011
Ch.	158	HB	256	10/01/2011
Ch.	159	HB	269	10/01/2011
Ch.	160	HB	315	10/01/2011
Ch.	161	HB	391	10/01/2011
Ch.	162	HB	430	04/08/2011
Ch.	163	HB	487	04/08/2011
Ch.	164	HB	498	04/08/2011
Ch.	165	HB	528	10/01/2011
Ch.	166	HB	594	10/01/2011
Ch.	167	HB	334	04/12/2011
Ch.	168	HB	508	10/01/2011
Ch.	169	SB	222	10/01/2011
Ch.	170	HB	66	10/01/2011
Ch.	171	HB	421	10/01/2011
Ch.	172	HB	480	10/01/2011
Ch.	173	HB	547	07/01/2011
Ch.	174	HB	566	03/01/2012
Ch.	175	SB	74	07/01/2011
Ch.	176	SB	76	10/01/2011
Ch.	177	SB	91	04/14/2011
Ch.	178	SB	115	04/14/2011

Ch.	179		SB	118	04/14/2011
Ch.	180		HB	187	10/01/2011
Ch.	181		HB	195	10/01/2011
Ch.	182		HB	330	10/01/2011
Ch.	183		HB	339	03/01/2012
Ch.	184		HB	479	04/15/2011
Ch.	185		HB	491	04/15/2011
Ch.	186		HB	575	04/15/2011
Ch.	187		SB	3	10/01/2011
Ch.	188		SB	5	04/15/2011
Ch.	189		SB	9	04/15/2011
Ch.	190		SB	55	04/15/2011
Ch.	191		SB	160	10/01/2011
Ch.	192		SB	194	10/01/2011
Ch.	193		SB	208	10/01/2011
Ch.	194		SB	210	10/01/2011
Ch.	195		SB	223	07/01/2011
Ch.	196		SB	236	04/15/2011
Ch.	197		SB	248	10/01/2011
Ch.	198		SB	275	10/01/2011
Ch.	199		SB	280	10/01/2011
Ch.	200		SB	287	07/01/2011
Ch.	201		SB	290	04/15/2011
Ch.	202		SB	355	07/01/2011
Ch.	203		SB	268	Effective upon approval by the electorate
Ch.	204		HB	61	10/01/2011
Ch.	205		HB	95	04/18/2011
Ch.	206	§§ 3 and 4	HB	103	04/18/2011
		§§ 1 and 2			01/01/2012
Ch.	207		HB	178	10/01/2011
Ch.	208		HB	191	04/18/2011
Ch.	209		HB	213	01/01/2012
Ch.	210		HB	251	10/01/2011
Ch.	211		HB	288	07/01/2011
Ch.	212		HB	300	10/01/2011
Ch.	213		HB	352	04/18/2011
Ch.	214		HB	380	10/01/2011
Ch.	215		HB	529	10/01/2011
Ch.	216		HB	535	10/01/2011
Ch.	217		SB	89	04/18/2011
Ch.	218		SB	140	04/18/2011
Ch.	219		SB	179	04/18/2011
Ch.	220		SB	180	04/18/2011
Ch.	221		SB	184	10/01/2011
Ch.	222		SB	213	04/18/2011
Ch.	223		SB	304	10/01/2011
Ch.	224		SB	320	04/18/2011
Ch.	225		HB	12	04/20/2011
Ch.	226		HB	69	10/01/2011
Ch.	227		HB	125	04/20/2011
Ch.	228		HB	279	04/20/2011
Ch.	229		HB	469	04/20/2011
Ch.	230		HB	548	04/20/2011
Ch.	231		HB	584	01/01/2012
Ch.	232		SB	28	04/20/2011
Ch.	233		SB	43	10/01/2011
Ch.	234		SB	52	10/01/2011
Ch.	235		SB	68	10/01/2011
Ch.	236		SB	120	07/01/2011
Ch.	237		SB	278	04/20/2011
Ch.	238		SB	337	10/01/2011
Ch.	239		SB	352	10/01/2011

Ch.	240		HB	51	07/01/2011
Ch.	241		HB	83	07/01/2011
Ch.	242		HB	91	01/01/2012
Ch.	243		HB	107	04/21/2011
Ch.	244		HB	166	04/21/2011
Ch.	245		HB	196	10/01/2011
Ch.	246		HB	216	10/01/2011
Ch.	247		HB	277	04/22/2011
Ch.	248		HB	291	04/21/2011
Ch.	249		HB	295	04/21/2011
Ch.	250		HB	336	10/01/2011
Ch.	251		HB	411	04/21/2011
Ch.	252		HB	522	10/01/2011
Ch.	253		HB	538	04/22/2011
Ch.	254		HB	541	04/21/2011
Ch.	255		HB	552	07/01/2011
Ch.	256	§§ 1-3, 5, and 6	HB	602	04/21/2011
		§ 4			07/01/2011
Ch.	257		SB	30	07/01/2011
Ch.	258		SB	124	10/01/2011
Ch.	259		SB	146	04/21/2011
Ch.	260		SB	218	04/21/2011
Ch.	261	§§ 1, 4, and 5	SB	219	04/21/2011
		§§ 2 and 3			10/01/2011
Ch.	262		SB	242	07/01/2011
Ch.	263		SB	246	04/21/2011
Ch.	264		SB	285	Effective on occurrence of the contingency contained in section 31(1), Chapter 474, Laws of 2009.
Ch.	265		SB	288	10/01/2011
Ch.	266		SB	357	04/21/2011
Ch.	267		SB	367	10/01/2011
Ch.	268		SB	374	10/01/2011
Ch.	269		SB	413	04/21/2011
Ch.	270		HB	188	10/01/2011
Ch.	271		HB	327	04/23/2011
Ch.	272		SB	135	04/22/2011
Ch.	273		SB	138	07/01/2011
Ch.	274		SB	149	10/01/2011
Ch.	275		SB	327	04/22/2011
Ch.	276		SB	382	10/01/2011
Ch.	277		SB	389	10/01/2011
Ch.	278		HB	618	10/01/2011
Ch.	279		SB	59	04/27/2011
Ch.	280		SB	319	07/01/2011
Ch.	281		HB	3	04/28/2011
Ch.	282		SB	15	04/28/2011
Ch.	283		SB	42	04/28/2011
Ch.	284		SB	238	07/01/2011
Ch.	285		SB	333	01/01/2012
Ch.	286		SB	347	10/01/2011
Ch.	287		SB	385	04/28/2011
Ch.	288		SB	412	01/01/2012
Ch.	289		SB	420	04/28/2011
Ch.	290		HB	265	04/28/2011
Ch.	291		HB	416	04/28/2011
Ch.	292		HB	172	03/01/2012
Ch.	293		SB	1	01/01/2012
Ch.	294		SB	16	04/29/2011
Ch.	295		SB	75	04/29/2011
Ch.	296	§§ 11-13	SB	81	10/01/2011
		§§ 7 and 8			01/01/2012
		§§ 1-6, 9, and 10			01/30/2012

Ch.	297		SB	87	04/29/2011
Ch.	298		SB	99	03/01/2012
Ch.	299		SB	173	10/01/2011
Ch.	300		SB	195	04/29/2011
Ch.	301		SB	234	04/29/2011
Ch.	302		SB	267	10/01/2011
Ch.	303		SB	296	04/29/2011
Ch.	304		SB	311	10/01/2011
Ch.	305		SB	340	04/29/2011
Ch.	306		SB	376	04/29/2011
Ch.	307		HB	627	If approved by the electorate, this act is effective January 1, 2013.
Ch.	308		HB	638	If approved by the electorate, this act is effective January 1, 2013.
Ch.	309		SB	172	10/01/2011
Ch.	310		SB	418	If approved by the electorate, this act is effective January 1, 2013.
Ch.	311		SB	426	If approved by the electorate, this act is effective January 1, 2013.
Ch.	312		HB	604	05/04/2011
Ch.	313		HB	15	07/01/2011
Ch.	314		HB	29	05/05/2011
Ch.	315		HB	43	05/06/2011
Ch.	316		HB	47	05/05/2011
Ch.	317		HB	90	10/01/2011
Ch.	318		HB	106	10/01/2011
Ch.	319		HB	111	07/01/2011
Ch.	320		HB	133	10/01/2011
Ch.	321		HB	198	05/09/2011
Ch.	322		HB	249	10/01/2011
Ch.	323	§§ 1, 3, and 4	HB	262	05/06/2011
		§ 2			07/01/2011
Ch.	324	§§ 2-4 and 7-9.	HB	296	05/06/2011
		§§ 1, 5, and 6			07/01/2011
Ch.	325		HB	297	10/01/2011
Ch.	326		HB	370	01/01/2012
Ch.	327		HB	409	10/01/2011
Ch.	328		HB	458	10/01/2011
Ch.	329		HB	518	10/01/2011
Ch.	330		HB	525	05/05/2011
Ch.	331		HB	530	10/01/2011
Ch.	332		HB	533	05/06/2011
Ch.	333		HB	543	10/01/2011
Ch.	334		HB	559	10/01/2011
Ch.	335		HB	587	07/01/2011
Ch.	336		HB	607	05/05/2011
Ch.	337		HB	611	07/01/2011
Ch.	338		HB	615	05/05/2011
Ch.	339		HB	622	07/01/2011
Ch.	340		SB	11	07/01/2011
Ch.	341		SB	126	05/06/2011
Ch.	342		SB	132	10/01/2011
Ch.	343		SB	153	10/01/2011
Ch.	344		SB	187	07/01/2011
Ch.	345		SB	215	05/06/2011
Ch.	346		SB	221	10/01/2011
Ch.	347		SB	283	10/01/2011
Ch.	348		SB	294	07/01/2011
Ch.	349		SB	326	07/01/2011
Ch.	350		SB	331	05/06/2011
Ch.	351		SB	351	05/06/2011
Ch.	352		SB	354	10/01/2011
Ch.	353		SB	411	05/06/2011

Ch.	354		SB	417	10/01/2011
Ch.	355	§§ 1 and 3-5	SB	429	05/06/2011
		§ 2			10/01/2011
Ch.	356		HB	132	10/01/2011
Ch.	357		HB	258	05/09/2011
Ch.	358		HB	477	07/01/2011
Ch.	359		SB	35	10/01/2011
Ch.	360		SB	36	05/09/2011
Ch.	361		SB	156	05/09/2011
Ch.	362		SB	410	05/09/2011
Ch.	363		HB	2	07/01/2011
Ch.	364		HB	4	05/12/2011
Ch.	365		HB	6	07/01/2011
Ch.	366		HB	8	07/01/2011
Ch.	367		HB	9	07/01/2011
Ch.	368		HB	10	05/12/2011
Ch.	369		HB	122	07/01/2011
Ch.	370		HB	159	10/01/2011
Ch.	371		HB	165	07/01/2011
Ch.	372		HB	310	01/01/2013
Ch.	373		HB	460	05/12/2011
Ch.	374		HB	560	10/01/2011
Ch.	375		HB	561	10/01/2011
Ch.	376		HB	562	10/01/2011
Ch.	377		HB	565	10/01/2011
Ch.	378		HB	621	07/01/2011
Ch.	379		HB	641	07/01/2011
Ch.	380	§§ 1, 2, 4, and 5	HB	642	05/12/2011
		§ 3			07/01/2011
Ch.	381		SB	166	10/01/2011
Ch.	382		SB	206	05/12/2011
Ch.	383		SB	212	05/12/2011
Ch.	384		SB	279	10/01/2011
Ch.	385		SB	305	05/12/2011
Ch.	386		SB	338	10/01/2011
Ch.	387		HB	5	05/12/2011
Ch.	388		HB	7	07/01/2011
Ch.	389		HB	351	07/01/2011
Ch.	390		HB	363	07/01/2011
Ch.	391		HB	372	07/01/2011
Ch.	392		HB	377	10/01/2011
Ch.	393		HB	495	07/01/2011
Ch.	394		HB	613	07/01/2011
Ch.	395		HB	619	07/01/2011
Ch.	396		SB	233	05/12/2011
Ch.	397		SB	241	05/12/2011
Ch.	398		SB	292	10/01/2011
Ch.	399		SB	295	07/01/2012
Ch.	400		SB	348	07/01/2011
Ch.	401		SB	409	05/12/2011
Ch.	402		SB	125	10/01/2011
Ch.	403		SB	207	05/13/2011
Ch.	404		SB	229	10/01/2011
Ch.	405		SB	265	07/01/2011
Ch.	406		SB	266	05/13/2011
Ch.	407		SB	286	05/13/2011
Ch.	408		SB	297	Effective on the date that the office of surface mining reclamation and enforcement publishes notice in the federal register that this act is approved pursuant to 30 CFR 732.17.
Ch.	409		SB	298	10/01/2011
Ch.	410		SB	312	10/01/2011

Ch.	411		SB	372		07/01/2011
Ch.	412		SB	29		10/01/2011
Ch.	413		SB	100		05/13/2011
Ch.	414		SB	108		05/14/2011
Ch.	415		SB	136		03/01/2012
Ch.	416		SB	143		05/14/2011
Ch.	417		SB	277		07/01/2011
Ch.	418	§§ 1-8 and 11-29	SB	329		05/13/2011
		§§ 9 and 10				07/01/2013
Ch.	419	§§ 20, 30, 31, 33, 35, 38, and 40	SB	423		05/13/2011
		§ 34 (The repeal of 50-46-103 as provided in section 34)				05/13/2011
		§ 1-19, 21-29, 32, 36, 37, and 39				07/01/2011
		§ 34 (The repeal of all sections other than 50-46-103, as provided in section 34)				07/01/2011

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01/31/2011	Ch.	1	HB	1
03/11/2011	Ch.	5	HB	54
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?	Ch.	67	HB	169	(§ 2(2), Effective on the date the secretary of state notifies the code commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed.)
?	Ch.	203	SB	268	(Effective upon approval by the electorate.)
?	Ch.	264	SB	285	(Effective on occurrence of the contingency contained in section 31(1), Chapter 474, Laws of 2009.)
?	Ch.	307	HB	627	(If approved by the electorate, this act is effective January 1, 2013.)
?	Ch.	308	HB	638	(If approved by the electorate, this act is effective January 1, 2013.)
?	Ch.	310	SB	418	(If approved by the electorate, this act is effective January 1, 2013.)

? . . . . . Ch. 311 . . . . . SB 426
(If approved by the electorate, this act is effective January 1, 2013.)

? . . . . . Ch. 408 . . . . . SB 297
(Effective on the date that the office of surface mining reclamation and enforcement publishes notice in the federal register that this act is approved pursuant to 30 CFR 732.17.)

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	7	Repealer
	8	Saving clause
10	1	39-31-107
11	1	41-3-301
	2	41-3-427
	3	Effective date
12	1	39-3-201
	2	39-3-213
	3	39-3-406
13	1	7-13-2221
	2	7-13-2277
	3	7-13-2278
	4	7-13-2279
	5	75-6-305
	6	Severability
	7	Effective date
14	1	20-3-321
	2	20-3-332
	3	20-3-351
	4	20-3-352
15	1	20-1-213
	2	Effective date
16	1	81-2-115
	2	Codification instruction
17	1	25-1-104
	2	25-9-101
	3	Codification instruction
	4	Effective date
	5	Applicability
18	1	2-15-1731
	2	Effective date
19	1	7-3-4324
	2	7-6-2541
	3	10-3-1308
	4	10-4-311
	5	10-4-313
	6	15-30-2339
	7	15-35-108
	8	15-36-304
	9	15-66-102
	10	15-70-324
	11	16-2-203
	12	16-11-119 (Voided by sec. 8, Ch. 324)
	13	17-1-511
	14	20-7-1201
	15	20-9-235
	16	25-9-608
	17	30-10-103
	18	30-10-104
	19	30-13-338
	20	32-2-406
	21	32-9-103
	22	33-2-1323
	23	35-16-303
	24	37-15-103
	25	46-6-412
	26	50-4-504
	27	50-15-114
	28	50-40-104
	29	50-40-201
	30	53-6-1001
	31	61-11-203
	32	69-3-111
	33	69-3-2004
	34	69-5-104
	35	70-27-111
	36	72-3-916
	37	75-1-207
	38	75-15-103
	39	75-20-104
	40	76-2-303
	41	82-11-111
	42	85-2-436
	43	87-2-101
	44	87-3-236
	45	87-5-714
	46	90-3-1301
	47	Sec. 8, Ch. 330, L. 2009
	48	Repealer
	49	Directions to code commissioner
20	1	35-19-107
	2	Saving clause
	3	Effective date
21	1	53-1-203
22	1	10-1-104
	2	Applicability
23	1	76-5-208
	2	76-5-405
	3	Repealer
	4	Effective date
24	1	2-18-103
	2	47-1-103
	3	47-1-104
	4	47-1-105
	5	47-1-201
	6	47-1-205
	7	47-1-216
	8	Effective date
25	1	20-9-421
	2	20-9-471
	3	Effective date
26	1	30-13-203
	2	30-13-206
	3	30-13-207
	4	30-13-213
	5	30-13-217
	6	30-13-313
	7	30-16-301
	8	35-1-216
	9	35-1-1028
	10	35-1-1029
	11	35-1-1104
	12	35-2-213
	13	35-2-822
	14	35-2-904
	15	35-3-209
	16	35-8-202
	17	35-8-208
	18	35-8-912 (Voided by sec. 3, Ch. 355)
	19	35-8-1003
	20	35-10-102
	21	35-10-701
	22	35-10-715
	23	35-10-716
	24	35-10-717
	25	35-10-718
	26	35-10-719
	27	35-10-720
	28	35-10-721
	29	35-10-722
	30	35-10-723
	31	35-10-724
	32	35-12-601
	33	35-12-610
	34	35-12-1311
	35	35-12-1302
	36	Repealer
	37	Codification instruction
27	1	33-10-201
	2	33-10-202
	3	33-10-205
	4	33-10-210
	5	33-10-216
	6	33-10-217
	7	33-10-222
	8	33-10-223
	9	33-10-224
	10	33-10-225
	11	33-10-226
	12	33-10-227
	13	Repealer
	14	Severability
	15	Effective date — applicability
28	1	16-2-203
	2	Applicability
29	1	85-2-420
	2	85-2-102
	3	85-2-310
	4	85-2-402
	5	Codification instruction
30	1	49-4-509
31	1	47-1-110
32	1	53-9-103
	2	53-9-123

	3	53-9-128
33	1	10-2-501
	2	Effective date
34	1	61-10-124
35	1	7-13-2303
36	1	39-71-703
	2	39-71-721
	3	39-71-741
	4	Effective date
	5	Retroactive applicability
37	1	40-15-201
38	1	3-1-102
	2	3-11-101
	3	3-11-109
	4	3-11-110
	5	25-33-301
	6	46-17-311
	7	Saving clause
	8	Codification instruction
	9	Effective date
39	1	46-30-411
40	1	23-7-311
	2	Effective date
41	1	2-3-301
	2	2-4-302
	3	Effective date
42	1	30-14-1726
	2	30-14-1727
43	1	90-4-1003
	2	Effective date
44	1	20-7-401
	2	20-7-411
45	1	7-4-2636
46	1	45-5-502
47	1	85-20-1007
	2	Effective date
48	1	27-1-717
49	1	32-1-220
	2	32-1-372
	3	32-1-381
50	1	2-17-808
	2	Effective date
51	1	37-1-131
52	1	33-20-1501
	2	Effective date
53	1	2-4-302
	2	Effective date
54	1	2-18-704
	2	33-1-102
	3	33-22-129
	4	33-22-134
	5	33-22-136
	6	Contingent voidness
55	1	Repealer
	2	Saving clause
	3	Effective date
56	1	69-3-2003
	2	Saving clause
	3	Effective date
	4	Applicability
57	1	17-7-502
	2	85-20-1504
	3	Effective date
58	1	30-10-1001
	2	30-10-1002
	3	30-10-1003
	4	30-10-1004
	5	30-10-1005
	6	30-10-1006
	7	30-10-1007
	8	30-10-1008
	9	17-7-502
	10	30-10-103
	11	30-10-305
	12	Codification instruction
	13	Severability
	14	Effective date
	15	Applicability
	16	Termination
59	1	19-20-101
	2	19-20-102
	3	19-20-203
	4	19-20-208
	5	19-20-305
	6	19-20-405
	7	19-20-701
	8	19-20-702
	9	19-20-703
	10	19-20-705
	11	19-20-715
	12	19-20-717
	13	19-20-721
	14	19-20-731
	15	19-20-733
	16	19-20-805
	17	19-20-1001
	18	19-20-1002
	19	19-20-1003
	20	19-20-1101
	21	Repealer
	22	Effective date
60	1	69-3-604
	2	Saving clause
	3	Effective date
	4	Applicability
61	1	17-7-502
	2	76-13-410
	3	76-13-416
	4	Codification instruction
	5	Effective date
	6	Termination
62	1	10-3-801
	2	77-1-804
	3	87-1-601
	4	Effective date
63	1	2-15-1019
	2	Effective date — applicability
64	1	7-33-2110
	2	7-33-2311
	3	7-33-2316
	4	19-2-408
	5	19-17-102
	6	19-17-106
	7	19-17-109
	8	19-17-108
	9	19-17-110
	10	19-17-111
	11	19-17-112
	12	19-17-113
	13	19-17-201
	14	19-17-203
	15	19-17-204
	16	19-17-401
	17	19-17-403
	18	19-17-404
	19	19-17-411
	20	19-17-412
	21	19-17-501
	22	19-17-502
	23	19-17-503
	24	19-17-506
	25	19-17-601
	26	19-17-602
	27	19-17-606
	28	Repealer
	29	Directions to code commissioner
	30	Codification instructions
	31	Effective date
65	1	2-3-212
66	1	23-5-112
	2	23-5-412
	3	23-5-608
67	1	35-19-311
	2	Repealer
	3	Saving clause
	4	Transition
	5	Effective dates — contingency
68	1	87-2-706
	2	Effective date
69	1	69-3-603
	2	Saving clause
	3	Severability
	4	Effective date
	5	Applicability
70	1	17-1-106
71	1	2-15-3113
	2	87-1-217
72	1	37-35-102
73	1	61-3-303
	2	61-3-312
	3	61-6-105
	4	61-6-157
	5	61-6-302
	6	Effective date
74	1	61-3-205
	2	Effective date
75	1	33-28-101
	2	33-28-102
	3	33-28-104
	4	33-28-107
	5	33-28-202
	6	33-28-301
	7	33-28-302
	8	33-28-304
76	1	72-6-121
77	1	16-1-106
	2	16-3-303
	3	Effective date
78	1	61-3-211
79	1	37-51-302
	2	37-51-305
	3	37-51-308
	4	37-51-309
	5	37-51-602
	6	Saving clause
80	1	61-8-904
	2	61-9-416
81	1	16-4-312
82	1	17-8-303
	2	Effective date
83	1	76-4-104

	2	Effective date
	3	Applicability
84	1	82-4-235
	2	Repealer
	3	Effective date
85	1	75-6-102
	2	75-6-103
86	1	16-4-207
	2	16-3-316
	3	Codification instruction
	4	Saving clause
	5	Effective date
87	1	41-5-206
	2	Saving clause
88	1	76-2-305
	2	Effective date
89	1	1-1-230
	2	Notification to tribal governments
	3	Codification instruction
90	1	7-2-4101
91	1	5-5-223
	2	5-5-226
	3	5-5-228
	4	Effective date
92	1	5-5-202
	2	5-5-211
	3	Effective date
93	1	20-9-342
	2	77-1-101
	3	Saving clause
	4	Effective date
94	1	75-2-111
	2	Effective date
95	1	41-5-2003
	2	Effective date
96	1	85-2-306
97	1	85-2-306
98	1	39-51-201
99	1	2-4-110
	2	2-15-1009
	3	17-6-203
	4	19-2-303
	5	19-2-403
	6	19-2-506
	7	19-2-603
	8	19-2-706
	9	19-2-715
	10	19-2-801
	11	19-2-802
	12	19-2-908
	13	19-3-108
	14	19-3-319
	15	19-3-401
	16	19-3-403
	17	19-3-412
	18	19-3-513
	19	19-3-901
	20	19-3-906
	21	19-3-1106
	22	19-3-1201
	23	19-3-1202
	24	19-3-1203
	25	19-3-1501
	26	19-3-2114
	27	19-3-2117
	28	19-5-701
	29	19-7-301
	30	19-7-302
	31	19-7-1001
	32	19-8-101
	33	19-8-601
	34	19-8-801
	35	19-8-1003
	36	19-13-301
	37	19-13-1101
	38	19-21-214
	39	Repealer
	40	Codification instruction
	41	Effective date
100	1	37-1-304
	2	37-1-305
	3	37-1-307
	4	37-3-310
	5	37-4-101
	6	37-4-511
	7	37-6-302
	8	37-31-305
	9	37-31-309
	10	37-31-312
	11	37-47-202
	12	37-47-310
	13	37-47-351
	14	37-51-204
	15	37-51-308
	16	37-51-605
	17	37-60-101
	18	37-60-202
	19	37-60-303
	20	37-67-306
	21	37-67-312
	22	37-67-313
	23	50-76-113
	24	Repealer
101	1	13-13-201
	2	13-13-204
	3	13-13-212
	4	13-13-213
	5	13-13-222
	6	13-13-241 (Voided and replaced by sec. 2, Ch. 331)
	7	13-13-245
	8	13-15-201
	9	13-19-102
	10	13-19-106
	11	13-19-205
	12	13-19-206
	13	13-19-207
	14	13-19-301
	15	13-19-303
	16	13-19-305
	17	13-19-306
	18	13-19-308
	19	13-19-309
	20	13-19-312
	21	13-19-313
	22	Repealer
	23	Codification instruction
	24	Effective date
102	1	2-15-2302
	2	46-23-103
	3	46-23-104
	4	46-23-109
	5	46-23-201
	6	46-23-202
	7	46-23-210
	8	46-23-215
	9	46-23-218
	10	46-23-301
	11	46-23-302
	12	46-23-306
	13	46-23-307
	14	46-23-1025
	15	Effective date
	16	Implementation — staggered terms
	17	Retroactive applicability
103	1	61-12-314
	2	Effective date
104	1	61-8-339
105	1	60-1-217
	2	Codification instruction
	3	Effective date
106	1	23-2-824
	2	Codification instruction
107	1	15-6-203
	2	Effective date
	3	Retroactive applicability
108	1	7-8-2304
	2	31-1-107
	3	33-3-431
	4	Effective date — applicability
109	1	72-31-301
	2	72-31-302
	3	72-31-303
	4	72-31-305
	5	72-31-306
	6	72-31-307
	7	72-31-308
	8	72-31-309
	9	72-31-310
	10	72-31-316
	11	72-31-317
	12	72-31-318
	13	72-31-319
	14	72-31-320
	15	72-31-321
	16	72-31-322
	17	72-31-323
	18	72-31-324
	19	72-31-325
	20	72-31-326
	21	72-31-327
	22	72-31-328
	23	72-31-336
	24	72-31-337
	25	72-3-917
	26	72-5-501
	27	72-5-502
	28	72-31-222 (Renumbered 72-31-304)
	29	72-31-223 (Renumbered 72-31-338)
	30	72-31-224 (Renumbered 72-31-339)

	31	72-31-225 (Renumbered 72-31-340)
	32	72-31-226 (Renumbered 72-31-341)
	33	72-31-227 (Renumbered 72-31-342)
	34	72-31-228 (Renumbered 72-31-343)
	35	72-31-229 (Renumbered 72-31-344)
	36	72-31-230 (Renumbered 72-31-345)
	37	72-31-231 (Renumbered 72-31-346)
	38	72-31-232 (Renumbered 72-31-347)
	39	72-31-233 (Renumbered 72-31-348)
	40	72-31-234 (Renumbered 72-31-349)
	41	72-31-235 (Renumbered 72-31-350)
	42	72-31-236 (Renumbered 72-31-351)
	43	72-31-352
	44	72-31-353
	45	72-31-354
	46	72-31-238 (Renumbered 72-31-365)
	47	72-31-366
	48	72-31-367
	49	Repealer
	50	Codification instruction
110	1	30-13-202
	2	35-1-310
	3	Effective date
111	1	13-13-212
	2	13-21-210
	3	Effective date
112	1	85-2-301
113	1	87-3-111 (Voided by sec. 123, Ch. 258)
	2	87-3-118 (Voided by sec. 125, Ch. 258)
	3	Repealer
	4	Effective date
114	1	Review of health care insurance — advisory council
	2	Effective date
	3	Termination
115	1	69-3-2009
	2	69-3-2010
	3	Notification to tribal governments
	4	Codification instruction
	5	Saving clause
	6	Effective date
	7	Applicability
116	1	Repealer
	2	Effective date
117	1	61-3-332 (Voided by sec. 2, Ch. 127)
	2	Effective date
118	1	87-5-208
119	1	37-7-101
	2	37-7-105
	3	Codification instruction
120	1	69-5-104(1)
	2	69-5-102
	3	69-8-411
	4	Codification instruction
	5	Effective date
121	1	23-5-602
	2	23-5-603
	3	23-5-607
	4	23-5-608
	5	23-5-611
	6	23-5-621
	7	Effective date
122	1	37-2-316
	2	37-2-202
	3	37-1-131
	4	37-3-203
	5	37-3-401
	6	37-4-311
	7	37-7-201
	8	37-8-202
	9	Repealer
	10	Codification instruction
123	1	15-31-150
	2	39-51-201
	3	39-51-204
	4	39-51-301
	5	39-51-1212
	6	39-51-1214
	7	39-51-2101
	8	39-51-2111
	9	39-51-2302
	10	39-51-3206
	11	53-20-221
	12	53-20-222
	13	39-51-3208
	14	Notification to tribal governments
	15	Codification instruction
124	1	37-3-203
	2	50-46-103
	3	50-46-202
	4	Coordination instruction
	5	Effective date
125	1	44-6-103
	2	Applicability
126	1	5-5-215
	2	5-11-210
127	1	61-3-332
	2	Coordination instruction
	3	Effective date
128	1	2-18-641
	2	2-18-702
	3	7-2-2213
	4	7-2-2218
	5	7-2-2222
	6	7-2-2225
	7	7-3-1214
	8	7-3-1306
	9	7-3-1341
	10	7-4-2405
	11	7-4-2601
	12	7-4-2602
	13	7-4-2703
	14	7-4-2705
	15	7-4-3006
	16	7-6-2102
	17	7-6-2401
	18	7-6-2413
	19	7-21-3211
	20	7-22-2142
	21	7-32-101
	22	7-32-2102
	23	7-32-2111
	24	13-17-101
	25	15-23-703
	26	15-24-3001
	27	15-36-332
	28	15-39-110
	29	30-14-122
	30	39-4-107
	31	80-7-814 (Voided and replaced by sec. 12, Ch. 244)
	32	90-6-1001
	33	Repealer
	34	Effective date
129	1	61-4-129
130	1	46-13-110
	2	Repealer
	3	Effective date
131	1	61-10-104
132	1	7-5-2316 7-5-4316 20-6-630 60-2-118
	2	Codification instruction
133	1	33-22-1501
	2	33-22-1504
	3	33-22-1512
	4	33-22-1521
	5	Effective date
134	1	87-1-513
	2	87-2-101 (Voided by sec. 122, Ch. 258)
	3	87-2-114
	4	87-2-807 (Voided by sec. 122, Ch. 258)
	5	Saving clause
135	1	7-4-2636
	2	7-4-2637
136	1	61-8-903
137	1	70-17-203
	2	76-3-509

	3	Effective date
138	1	32-1-429
	2	32-3-609
139	1	87-5-721
	2	Saving clause
140	1	15-30-2326
	2	15-31-135
	3	15-31-136
	4	20-26-603
	5	Notification to tribal governments
	6	Applicability
141	1	77-2-103
	2	77-2-351
142	1	61-10-141
143	1	61-8-920
	2	61-8-903
	3	61-8-904
	4	61-8-908
	5	Codification instruction
144	1	85-1-211
	2	Effective date
145	1	82-4-335
	2	Effective date
146	1	2-7-506
147	1	85-20-1511
	2	17-7-502
	3	85-20-1505
	4	Notification to tribal governments
	5	Codification instruction
	6	Severability
	7	Two-thirds vote required
	8	Effective date
148	1	18-7-302
	2	18-7-306
	3	Repealer
149	1	61-5-231
	2	61-2-302
	3	61-5-205
	4	61-5-208
	5	61-8-734
	6	Codification instruction
	7	Applicability
150	1	39-71-107
	2	39-71-418
	3	39-71-2215
	4	Effective date
151	1	19-20-208
	2	19-20-402
	3	19-20-403
	4	19-20-404
	5	19-20-408
	6	19-20-410
	7	19-20-416
	8	19-20-427
	9	19-20-715
	10	19-20-731
	11	19-20-802
	12	Effective date
152	1	7-6-4036
	2	15-10-305
	3	20-3-205
	4	20-3-209
	5	20-7-705
	6	20-9-115
	7	20-9-121
	8	20-9-131
	9	20-9-134
	10	20-9-141
	11	20-9-142
	12	20-9-151
	13	20-9-152
	14	20-9-213
	15	20-9-439
	16	20-9-501
	17	20-9-503
	18	20-9-506
	19	20-9-533
	20	20-9-534
	21	20-9-604
	22	20-10-144
	23	20-10-146
	24	20-10-147
	25	20-15-313
	26	Repealer
	27	Effective date
153	1	10-3-1203
	2	10-3-1216
154	1	19-8-101
	2	Effective date
155	1	19-7-101
	2	Effective date
156	1	44-12-102
	2	45-9-101
	3	45-9-102
	4	45-9-110
	5	50-31-306
	6	50-31-310
	7	50-32-222
	8	Effective date
157	1	23-2-657
	2	Codification instruction
	3	Effective date
158	1	37-19-904
	2	Retroactive applicability
159	1	44-2-801
	2	Codification instruction
160	1	50-74-218
	2	50-74-307
161	1	7-5-131
162	1	76-15-301
	2	76-15-311
	3	76-15-312
	4	Effective date
163	1	33-20-1112
	2	Codification instruction
	3	Effective date
164	1	85-7-2013
	2	85-7-2014
	3	85-7-2016
	4	85-7-2032
	5	Effective date
165	1	1-1-525
166	1	60-2-240
	2	Codification instruction
167	1	39-71-105
	2	39-71-116
	3	39-71-118
	4	39-71-225
	5	39-71-315
	6	39-71-320
	7	39-71-403
	8	39-71-407
	9	39-71-703
	10	39-71-704
	11	39-71-711
	12	39-71-721
	13	39-71-736
	14	39-71-741
	15	39-71-1011
	16	39-71-1041
	17	39-71-1042
	18	39-71-1043
	19	39-71-1049
	20	39-71-1050
	21	39-71-1051
	22	39-71-1025
	23	39-71-1031
	24	39-71-1101
	25	39-71-1102
	26	39-71-1106
	27	39-71-2361
	28	39-71-1036
	29	39-71-717
	30	Transition for stay-at-work/ return-to-work assistance fund
	31	Codification instruction
	32	Saving clause
	33	Severability — nonseverablity
	34	Effective date
	35	Applicability — retroactive applicability
168	1	7-33-2116
	2	Codification instruction
169	1	7-33-4107
	2	7-33-4108
170	1	2-6-203
	2	2-15-1013 (Renumbered 2-6-208)
	3	Directions to code commissioner
171	1	20-7-702
	2	20-7-712
172	1	3-10-116
173	1	33-22-114
	2	33-31-102
	3	37-8-202
	4	Effective date
174	1	87-1-301
	2	Effective date
175	1	80-4-402
	2	80-4-405
	3	80-4-421
	4	80-4-502
	5	80-4-505
	6	80-4-506
	7	80-4-601
	8	80-4-604
	9	Effective date
176	1	46-23-201
177	1	7-2-4101

	2	Contingent voidness
	3	Effective date
178	1	87-1-214
	2	Codification instruction
	3	Effective date
179	1	37-47-302
	2	37-47-304
	3	Effective date
180	1	7-14-2142
	2	7-14-2407
	3	60-2-141
	4	Codification instruction
181	1	61-5-111
182	1	13-1-210
	2	13-2-110
	3	13-13-212
	4	13-21-210
	5	Codification instruction
183	1	87-2-522
	2	Effective date
184	1	82-11-138
	2	Codification instruction
	3	Effective date
185	1	18-4-402
	2	Effective date
186	1	7-2-4601
	2	7-2-4606
	3	7-2-4608
	4	7-2-4705
	5	7-2-4731
	6	7-2-4732
	7	7-2-4734
	8	7-2-4741
	9	Effective date
187	1	22-3-422
	2	22-3-423
	3	22-3-424
188	1	Repealer
	2	Effective date
189	1	75-11-307
	2	75-11-309
	3	75-11-503
	4	75-11-505
	5	75-11-508
	6	Codification instruction
	7	Effective date
190	1	13-13-205
	2	13-21-201
	3	13-21-210
	4	Effective date
191	1	23-1-128
192	1	13-25-301
	2	13-25-302
	3	13-25-303
	4	13-25-304
	5	13-25-305
	6	13-25-306
	7	13-25-307
	8	13-25-308
	9	13-25-309
	10	Repealer
	11	Codification instruction
193	1	20-1-303
194	1	26-1-805
	2	45-9-104
195	1	19-17-404
	2	Effective date
196	1	75-10-112
	2	Effective date
197	1	15-15-101
198	1	7-35-4102
199	1	20-25-1401
	2	20-25-1403
	3	20-25-1404
	4	33-1-102
	5	Codification instruction
200	1	39-71-401
	2	39-71-417
	3	Effective date
201	1	49-2-101
	2	49-3-201
	3	Effective date
202	1	20-25-455
	2	20-25-456
	3	20-25-426
	4	Codification instruction
	5	Effective date
	6	Applicability
203	1	3-2-101 (Not codified — referendum)
	2	3-2-102 (Not codified — referendum)
	3	Supreme court districts defined — number of judges
	4	Transition
	5	Codification instruction
	6	Severability
	7	Effective date
	8	Applicability
	9	Submission to electorate
204	1	61-8-310
205	1	49-2-203
	2	49-2-303
	3	49-2-305
	4	49-2-403
	5	49-2-504
	6	Effective date
206	1	2-6-110
	2	15-1-103
	3	Effective dates
	4	Retroactive applicability
207	1	61-5-105
	2	61-12-501
	3	61-12-502
	4	61-12-504
	5	Repealer
208	1	50-50-103
	2	50-50-202
	3	Effective date
209	1	61-8-378
	2	61-5-122
	3	10-3-1307
	4	23-1-105
	5	61-1-101 (Amended by sec. 11, Ch. 247)
	6	61-3-201
	7	61-3-301
	8	61-3-312
	9	61-3-321
	10	61-3-332
	11	61-5-102
	12	61-6-158
	13	61-9-220
	14	61-9-432
	15	Codification instruction
	16	Effective date
	17	Grandfather clause
210	1	61-10-102
211	1	1-1-215
	2	20-5-321
	3	20-5-502
	4	20-5-503
	5	20-7-420
	6	Effective date
212	1	39-4-103
	2	39-4-104
	3	39-4-107
	4	39-4-109
213	1	75-6-107
	2	Effective date
214	1	7-13-2263
	2	7-3-4302
	3	7-13-2225
	4	7-13-2262
	5	7-13-2272
	6	7-13-2273
	7	7-13-2282
	8	7-13-4312
	9	69-3-101
	10	76-3-103
	11	Repealer
	12	Codification instruction
	13	Saving clause
	14	Severability
	15	Applicability
215	1	7-4-2631
216	1	35-12-502
	2	35-12-504
	3	35-12-511
	4	35-12-505
	5	35-12-506
	6	35-12-508
	7	35-12-509
	8	35-12-512
	9	35-12-513
	10	35-12-514
	11	35-12-515
	12	35-12-510
	13	Dual capacity (Not codified — identical to 35-12-510)
	14	35-12-516
	15	35-12-601
	16	35-12-602
	17	35-12-603
	18	35-12-604
	19	35-12-605
	20	35-12-614

21	35-12-616
22	35-12-607
23	35-12-617
24	35-12-610
25	35-12-618
26	35-12-701
27	35-12-706
28	35-12-703
29	35-12-704
30	35-12-705
31	35-12-707
32	35-12-801
33	35-12-806
34	35-12-807
35	35-12-803
36	35-12-808
37	35-12-809
38	35-12-810
39	35-12-811
40	35-12-901
41	35-12-902
42	35-12-905
43	35-12-1001
44	35-12-1009
45	35-12-1005
46	35-12-1006
47	35-12-1010
48	35-12-1011
49	35-12-1016
50	35-12-1017
51	35-12-1018
52	35-12-1019
53	35-12-1020
54	35-12-1021
55	35-12-1022
56	35-12-1106
57	35-12-1107
58	35-12-1103
59	35-12-1105
60	35-12-1201
61	35-12-1202
62	35-12-1205
63	35-12-1211
64	35-12-1212
65	35-12-1213
66	35-12-1214
67	35-12-1215
68	35-12-1216
69	35-12-1301
70	35-12-1302
71	35-12-1309
72	35-12-1310
73	35-12-1312
74	35-12-1313
75	35-12-1307
76	35-12-1308 (Renumbered 35-12-522)
77	35-12-1405
78	35-12-1401
79	35-12-1402
80	35-12-1403
81	35-12-1404
82	35-12-1501
83	35-12-1502
84	35-12-1503
85	35-12-1504
86	35-12-1505
87	35-12-1511
88	35-12-1512
89	35-12-1513
90	35-12-1514
91	35-12-1515
92	35-12-1520
93	35-12-1521
94	35-12-1522
95	Relation to electronic signatures in global and national commerce act
96	Application to existing relationships
97	Repealer
98	Codification instruction
99	Severability
100	Saving clause
217 1	76-4-104
2	76-4-125
3	Effective date
218 1	69-12-101
2	69-12-102
3	69-12-328
4	Severability
5	Effective date
219 1	60-1-218
2	Codification instruction
3	Effective date
220 1	45-6-106
2	Effective date
221 1	87-1-304
2	87-2-730
3	87-2-731
4	Notification to tribal governments
222 1	60-1-219
2	Codification instruction
3	Effective date
223 1	41-3-103
2	41-3-201
3	41-3-301
4	41-3-427
5	41-3-432
224 1	75-20-102
2	75-20-104
3	Effective date
4	Applicability
225 1	61-8-714
2	61-8-722
3	Effective date
4	Applicability
226 1	61-8-741
2	61-8-714
3	61-8-722
4	Codification instruction
5	Applicability
227 1	15-30-2368
2	15-31-130
3	30-10-115
4	30-10-209
5	30-10-308
6	33-1-311
7	33-2-601
8	33-2-1501
9	33-2-1903
10	33-2-1904
11	33-4-309
12	33-18-605
13	33-22-508
14	33-22-1803
15	33-22-1821
16	33-22-2002
17	33-22-2004
18	33-22-2006
19	33-22-2008
20	33-28-102
21	33-28-107
22	33-28-108
23	33-28-207
24	Repealer
25	Severability
26	Effective date
228 1	10-3-101
2	10-3-103
3	10-3-105
4	10-3-310
5	10-3-311
6	10-3-313
7	10-3-314
8	10-3-315
9	Notification to tribal governments
10	Effective date
229 1	2-15-3110
2	2-15-3111
3	2-15-3112
4	2-15-3113
5	81-1-110
6	Name change — directions to code commissioner
7	Effective date
230 1	46-18-203
2	Effective date
3	Retroactive applicability
231 1	61-3-301
2	61-3-332
3	Effective date
232 1	53-21-1203
2	Effective date
233 1	23-1-116
2	23-1-117
3	23-1-118
234 1	5-13-305
235 1	61-5-405
2	61-7-101
3	61-7-103
4	61-7-105
5	61-7-108
6	61-7-118
7	Repealer
236 1	2-15-155
2	Codification instruction
3	Effective date
237 1	50-6-320
2	33-1-102
3	Codification instruction
4	Effective date
238 1	1-1-203

	2	1-6-105
	3	25-4-203
	4	72-1-206
	5	72-1-310
	6	72-1-311
	7	72-1-312
	8	72-3-109
	9	72-3-401
	10	Codification instruction
	11	Saving clause
239	1	33-16-201
	2	33-18-210
240	1	90-4-605
	2	90-4-612
	3	90-4-614
	4	90-4-625
	5	Codification instruction
	6	Effective date
241	1	37-7-1501
	2	37-7-101
	3	37-7-1502
	4	37-7-1503
	5	37-7-1504
	6	37-7-1505
	7	37-7-1506
	8	37-7-1507
	9	37-7-1508
	10	37-7-1509
	11	37-7-1510
	12	37-7-1511
	13	37-7-1512
	14	37-7-1513
	15	37-7-1514
	16	Notification to tribal governments
	17	Codification instruction
	18	Severability
	19	Effective date
	20	Termination
242	1	5-2-406
	2	13-1-106
	3	13-1-108
	4	13-1-303
	5	13-1-304
	6	13-2-108
	7	13-2-110
	8	13-2-112
	9	13-2-115
	10	13-2-122
	11	13-2-220
	12	13-2-222
	13	13-2-304
	14	13-2-511
	15	13-2-512
	16	13-3-105
	17	13-4-102
	18	13-4-207
	19	13-10-201
	20	13-10-203
	21	13-10-209
	22	13-10-211
	23	13-10-325
	24	13-10-404
	25	13-10-405
	26	13-12-202
	27	13-12-203
	28	13-12-207
	29	13-13-111
	30	13-13-112
	31	13-13-113
	32	13-13-114
	33	13-13-116
	34	13-13-118
	35	13-13-119
	36	13-13-201
	37	13-13-211
	38	13-13-212
	39	13-13-214
	40	13-13-222
	41	13-13-225
	42	13-13-241
	43	13-13-301
	44	13-13-602
	45	13-14-115
	46	13-14-117
	47	13-14-118
	48	13-14-212
	49	13-15-101
	50	13-15-107
	51	13-15-108
	52	13-15-112
	53	13-15-205
	54	13-15-206
	55	13-15-402
	56	13-15-404
	57	13-15-506
	58	13-16-201
	59	13-16-412
	60	13-16-419
	61	13-17-203
	62	13-17-503
	63	13-19-102
	64	13-19-106
	65	13-19-206
	66	13-19-301
	67	13-19-306
	68	13-19-307
	69	13-19-308
	70	13-19-309
	71	13-19-310
	72	13-19-311
	73	13-19-313
	74	13-25-101
	75	13-38-201
	76	Repealer
	77	Effective date
243	1	77-3-322
	2	77-3-323
	3	Codification instruction
	4	Saving clause
	5	Effective date
244	1	7-4-2711
	2	7-22-2103
	3	7-22-2109
	4	7-22-2116
	5	7-22-2120
	6	7-22-2121
	7	7-22-2126
	8	7-22-2141
	9	7-22-2142
	10	7-22-2153
	11	80-7-814 (Voided and replaced by sec. 12, Ch. 244)
	12	Coordination instruction
	13	Effective date
245	1	90-1-181
	2	90-1-182
	3	Codification instruction
246	1	61-5-125
247	1	61-8-391
	2	10-3-1307
	3	23-1-105
	4	61-1-101 (Voided by sec. 11, Ch. 247)
	5	61-3-312
	6	61-3-321
	7	61-3-332
	8	61-6-158
	9	61-12-101
	10	Codification instruction
	11	Coordination instruction
	12	Effective date
248	1	69-5-121
	2	69-5-122
	3	Codification instruction
	4	Effective date
	5	Applicability
249	1	70-17-401
	2	70-17-402
	3	70-17-403
	4	70-17-404
	5	70-17-405
	6	70-17-406
	7	70-17-407
	8	70-17-408
	9	70-17-203
	10	Repealer
	11	Notification to tribal governments
	12	Codification instruction
	13	Saving clause
	14	Severability
	15	Effective date
250	1	87-1-111 (Voided by sec. 129, Ch. 258)
	2	87-1-115 (Voided by sec. 130, Ch. 258)
	3	87-3-102 (Voided by sec. 124, Ch. 258)
	4	87-3-506 (Voided by sec. 128, Ch. 258)
	5	Saving clause
251	1	2-18-501
	2	Effective date
252	1	76-3-610
	2	Applicability
253	1	17-5-107
	2	7-7-2212
	3	7-7-2238
	4	7-7-2251
	5	7-7-2252

	6	7-7-2254
	7	7-7-4211
	8	7-7-4236
	9	7-7-4251
	10	7-7-4252
	11	7-7-4254
	12	7-7-4433
	13	7-7-4434
	14	7-10-220
	15	7-10-221
	16	7-12-2172
	17	7-12-4204
	18	7-14-4652
	19	7-15-4507
	20	7-31-113
	21	20-9-429
	22	20-9-430
	23	20-9-431
	24	20-9-432
	25	85-7-1436
	26	85-7-1437
	27	85-7-2022
	28	85-7-2023
	29	85-7-2033
	30	85-8-503
	31	85-9-625
	32	Codification instruction
	33	Severability
	34	Effective date
	35	Applicability
254	1	87-1-301
	2	87-1-303
	3	Severability
	4	Effective date
255	1	7-6-621
	2	7-33-2109
	3	7-33-2209
	4	7-33-2403
	5	7-33-4109
	6	7-33-4111
	7	7-34-102
	8	39-71-118
	9	39-71-123
	10	Effective date
256	1	Legislative findings
	2	Interim study
	3	Limit on rulemaking authority
	4	Appropriation
	5	Effective dates
	6	Termination
257	1	75-10-722
	2	Effective date
258	1	87-6-101 (Replaced by sec. 122, Ch. 258)
	2	87-6-102
	3	87-6-103
	4	87-6-104
	5	87-6-105
	6	87-6-106
	7	87-6-201
	8	87-6-202 (Replaced by sec. 123, Ch. 258)
	9	87-6-203
	10	87-6-204
	11	87-6-205 (Replaced by sec. 124, Ch. 258)
	12	87-6-206 (Replaced by sec. 125, Ch. 258)
	13	Unlawful sale of grizzly bear (Voided by sec. 126, Ch. 258)
	14	87-6-207
	15	87-6-214
	16	87-6-215
	17	87-6-216
	18	87-6-217
	19	87-6-218
	20	87-6-219
	21	87-6-220
	22	87-6-301 (Replaced by sec. 3, Ch. 316)
	23	87-6-302
	24	87-6-303
	25	87-6-304
	26	87-6-305
	27	87-6-306
	28	87-6-310
	29	87-6-311
	30	87-6-312
	31	87-6-313
	32	87-6-314
	33	87-6-401
	34	87-6-402
	35	87-6-403
	36	87-6-404 (Replaced by sec. 127, Ch. 258)
	37	87-6-405
	38	87-6-406
	39	87-6-410
	40	87-6-411
	41	87-6-412
	42	87-6-413
	43	87-6-414
	44	87-6-415
	45	87-6-501
	46	87-6-601
	47	87-6-602
	48	87-6-603 (Replaced by sec. 128, Ch. 258)
	49	87-6-701
	50	87-6-702
	51	87-6-703
	52	87-6-704
	53	87-6-705
	54	87-6-706
	55	87-6-707
	56	87-6-713
	57	87-6-714
	58	87-6-715
	59	87-6-716
	60	87-6-717
	61	87-6-718
	62	87-6-801
	63	87-6-901
	64	87-6-902
	65	87-6-903
	66	87-6-904
	67	87-6-905
	68	87-6-906 (Replaced by sec. 129, Ch. 258)
	69	87-6-907 (Replaced by sec. 130, Ch. 258)
	70	87-6-908
	71	87-6-914
	72	87-6-915
	73	87-6-916
	74	87-6-917
	75	87-6-918
	76	87-6-919
	77	87-6-920
	78	87-6-921
	79	87-6-922
	80	87-6-923
	81	87-4-529
	82	45-6-101
	83	45-6-203
	84	81-2-121
	85	87-1-120
	86	87-1-232
	87	87-1-234
	88	87-1-601
	89	87-1-803
	90	87-1-804
	91	87-2-101
	92	87-2-104
	93	87-2-106
	94	87-2-202
	95	87-2-411
	96	87-2-521
	97	87-2-807
	98	87-3-110
	99	87-3-121
	100	87-3-126
	101	87-3-204
	102	87-3-221
	103	87-3-222
	104	87-3-224
	105	87-3-403
	106	87-4-201
	107	87-4-306
	108	87-4-407
	109	87-4-427
	110	87-4-601
	111	87-4-609
	112	87-4-803
	113	87-4-807
	114	87-4-903
	115	87-4-915
	116	87-4-1002
	117	87-5-204
	118	87-5-703
	119	87-5-721
	120	Repealer
	121	Codification instruction
	122	Coordination instruction
	123	Coordination instruction
	124	Coordination instruction
	125	Coordination instruction
	126	Coordination instruction

	127	Coordination instruction
	128	Coordination instruction
	129	Coordination instruction
	130	Coordination instruction
	131	Saving clause
	132	Severability
259	1	70-17-211
	2	70-17-212
	3	70-17-203
	4	Codification instruction
	5	Effective date
	6	Applicability
260	1	80-5-601
	2	80-5-602
	3	80-5-603
	4	80-5-604
	5	80-5-605
	6	80-5-606
	7	Codification instruction
	8	Severability
	9	Effective date
261	1	15-1-402
	2	15-1-409
	3	20-9-366
	4	Effective dates
	5	Applicability
262	1	39-71-118
	2	Effective date
263	1	69-3-809
	2	Effective date
264	1	82-11-183
	2	Contingent effective date
265	1	7-11-1027
266	1	2-16-501
	2	7-4-2106
	3	Effective date
267	1	75-5-103
	2	75-5-105
	3	75-5-313
	4	75-5-314
	5	Codification instruction
	6	Saving clause
	7	Severability
268	1	13-38-201
269	1	15-30-2504
	2	15-30-2512
	3	15-30-2604
	4	15-30-3302
	5	15-31-101
	6	15-31-111
	7	15-31-141
	8	15-31-502
	9	Effective date
	10	Retroactive applicability
270	1	37-54-102
	2	37-54-105
	3	37-54-501
	4	37-54-502
	5	37-54-503
	6	37-54-504
	7	37-54-505
	8	37-54-506
	9	37-54-507
	10	37-54-508
	11	37-54-509
	12	37-54-510
	13	37-54-511
	14	37-54-512
	15	37-54-513
	16	37-54-514
	17	37-54-515
	18	37-54-516
	19	37-54-517
	20	37-54-518
	21	37-54-519
	22	Codification instruction
271	1	20-3-305
	2	20-3-307
	3	20-3-313
	4	20-3-321
	5	20-9-406
	6	20-9-426
	7	20-9-427
	8	20-9-428
	9	Effective date
272	1	87-3-124 (Voided by sec. 127, Ch. 258)
	2	Effective date
273	1	19-21-203
	2	Coordination instruction
	3	Effective date
274	1	45-8-221
	2	Codification instruction
275	1	85-1-501
	2	Effective date
276	1	15-1-210
	2	Codification instruction
277	1	16-1-401
	2	16-1-404
	3	16-3-214
	4	16-4-311
278	1	15-6-201
	2	41-3-201
	3	61-3-321
	4	61-10-214
	5	Notification to tribal governments
	6	Applicability
279	1	Creation of mural to honor women
	2	2-17-808
	3	Contingent voidness
	4	Effective date
280	1	61-9-420
	2	61-9-423
	3	61-13-103
	4	Effective date
281	1	Time limits
	2	Appropriations — authorization to expend money
	3	Effective date
282	1	61-8-465
	2	61-8-101
	3	61-8-402
	4	61-8-404
	5	61-8-409
	6	61-8-714
	7	61-8-722
	8	61-8-731
	9	61-8-734
	10	Codification instruction
	11	Coordination instruction
	12	Effective date
	13	Applicability — retroactive applicability
283	1	46-5-224
	2	61-8-402
	3	61-8-404
	4	61-8-405
	5	61-8-409
	6	Effective date
	7	Applicability
284	1	3-10-301
	2	3-10-1004
	3	3-11-103
	4	7-1-4151
	5	25-35-502
	6	25-35-503
	7	25-35-606
	8	75-7-123
	9	Effective date
285	1	72-34-441
	2	72-34-452
	3	Transitional matters
	4	Effective date
286	1	2-10-111
	2	2-10-112
	3	Severability
	4	Codification instruction
287	1	53-4-209
	2	Notification to tribal governments
	3	Effective date
288	1	15-6-230(1)-(5)
	2	15-6-230(6)
	3	Existing tax liens not extinguished
	4	Notification to tribal governments
	5	Codification instruction
	6	Effective date
289	1	2-7-503
	2	2-7-517
	3	Effective date
	4	Applicability
290	1	33-18-224
	2	Effective date
291	1	37-2-401
	2	37-2-402
	3	37-2-403
	4	37-2-404
	5	37-2-409
	6	37-2-410
	7	Codification instruction

	8	Effective date
292	1	87-1-304
	2	87-2-701
	3	87-5-301
	4	87-5-302
	5	Effective date
293	1	7-12-2103
	2	7-12-2105
	3	7-12-2151
	4	7-12-4104
	5	7-12-4106
	6	7-12-4161
	7	7-12-4162
	8	Effective date
	9	Applicability
294	1	23-4-101
	2	23-4-105
	3	23-4-201
	4	23-4-202
	5	Effective date
295	1	2-16-117
	2	Effective date
296	1	61-5-141
	2	61-1-101
	3	61-5-112
	4	61-5-221 (Renumbered 61-5-147)
	5	61-8-102
	6	61-8-801
	7	61-8-803
	8	61-8-812
	9	61-11-102
	10	61-11-105
	11	Codification instruction
	12	Direction to code commissioner
	13	Effective dates
297	1	75-5-1107
	2	75-6-212
	3	Effective date
298	1	87-1-271
	2	87-2-903
	3	Effective date
299	1	27-30-101
300	1	2-15-1525
	2	20-25-229
	3	80-5-126
	4	80-5-128
	5	80-5-139
	6	Codification instruction
	7	Effective date
301	1	7-2-4736
	2	7-13-4107
	3	Effective date
302	1	75-5-703
303	1	80-7-404
	2	Effective date
304	1	13-10-201
305	1	7-33-2205
	2	Effective date
306	1	7-6-202
	2	Effective date
307	1	Short title
	2	Legislative purpose and findings
	3	Definitions
	4	Notice of parent required
	5	Alternative notification
	6	Exceptions
	7	Coercion prohibited
	8	Procedure for judicial waiver of notice
	9	Criminal and civil penalties
	10	41-1-405 (Not codified — referendum)
	11	47-1-104 (Not codified — referendum)
	12	Repealer
	13	Codification instruction
	14	Coordination instruction
	15	Effective date
	16	Submission to electorate
308	1	Certain state services denied to illegal aliens
	2	Codification instruction
	3	Coordination instruction
	4	Severability
	5	Effective date
	6	Applicability
	7	Submission to the electorate
309	1	15-6-137
	2	15-6-141
	3	15-6-156
	4	15-6-157
	5	75-20-104
	6	75-20-201
	7	Applicability
310	1	Short title
	2	Health insurance purchase mandate prohibited — exceptions
	3	Codification instruction
	4	Effective date
	5	Submission to electorate
311	1	Tax credits based on surplus fund balance — property tax — income tax
	2	Codification instruction
	3	Contingent voidness
	4	Effective date
	5	Submission to electorate
312	1	Transfer of funds to guarantee account
	2	Transfer of funds to general fund
	3	Transfer of funds to health and medicaid initiative account
	4	15-35-108
	5	39-71-2352 (Line-item vetoed)
	6	52-3-115
	7	53-19-310
	8	75-10-532
	9	75-10-743
	10	76-13-150
	11	76-15-904
	12	82-11-135
	13	Old fund liability account
	14	Old fund premium fee — assessment
	15	Appropriation
	16	Codification instruction
	17	Coordination instruction
	18	Severability
	19	Effective dates — applicability
	20	Termination
313	1	Appropriations from school facility and technology account — grants for school facility projects
	2	Appropriations from school facility and technology account — emergency grants
	3	Appropriations from school facility and technology account — planning grants
	4	Approval of grants — completion of biennial appropriation
	5	Notification to tribal governments
	6	Effective date
314	1	33-18-605
	2	Effective date
315	1	39-2-206
	2	39-2-210
	3	39-2-313
	4	39-71-407
	5	50-46-201
	6	50-46-205

	7	Coordination instructions
	8	Effective date
316	1	87-2-103 (Voided by sec. 2, Ch. 316)
	2	Coordination instruction (Enacts 87-2-311)
	3	Coordination instruction
	4	Effective date
317	1	31-1-202
	2	32-5-102
	3	32-7-103
	4	32-9-101
	5	32-9-102
	6	32-9-103
	7	32-9-104
	8	32-9-165
	9	32-9-105
	10	32-9-106
	11	32-9-107
	12	32-9-112
	13	32-9-113
	14	32-9-116
	15	32-9-117
	16	32-9-118
	17	32-9-120
	18	32-9-121
	19	32-9-122
	20	32-9-123
	21	32-9-166
	22	32-9-167
	23	32-9-124
	24	32-9-168
	25	32-9-169
	26	32-9-125
	27	32-9-126
	28	32-9-128
	29	32-9-129
	30	32-9-130
	31	32-9-133
	32	32-9-145
	33	32-9-148
	34	32-9-170
	35	32-9-150
	36	32-9-151
	37	32-9-160
	38	Repealer
	39	Codification instruction
318	1	44-4-1201
	2	44-4-1202
	3	44-4-1203
	4	44-4-1204
	5	44-4-1205
	6	44-4-1206
	7	45-7-309
	8	46-18-201
	9	61-5-208
	10	Codification instruction
	11	Saving clause
	12	Severability
319	1	15-65-121
	2	15-65-131
	3	Effective date
	4	Applicability
320	1	7-22-2123
	2	7-22-2124
	3	7-22-2148
321	1	69-3-113
	2	75-20-113
	3	Codification instruction
	4	Contingent voidness
	5	Effective date
	6	Retroactive applicability
322	1	35-1-534
323	1	Repealer
	2	Appropriation
	3	Coordination instruction
	4	Effective dates
324	1	16-11-119
	2	Definitions
	3	Planning and design
	4	Capital project — contingent funds
	5	Capital project appropriations
	6	Legislative consent and intent
	7	Contingency — termination and transfer to the general fund
	8	Coordination instruction
	9	Effective date
325	1	77-1-130
	2	Sec. 5, Ch. 461, L. 1997
	3	Sec. 6, Ch. 270, L. 2001
	4	Sec. 2, Ch. 57, L. 2005
	5	Sec. 3, Ch. 57, L. 2005
	6	Sec. 4, Ch. 57, L. 2005
	7	Termination
326	1	23-1-105
	2	61-3-321
	3	Effective date
327	1	53-10-203
328	1	2-15-1773
	2	37-47-201
	3	37-47-316
	4	37-47-318
	5	Repealer
329	1	53-21-1301
	2	53-21-1302
	3	53-21-1303
	4	53-21-1304
	5	53-21-1305
	6	53-21-1311
	7	53-21-1312
	8	53-21-1313
	9	53-21-1314
	10	53-21-1315
	11	53-21-1321
	12	53-21-1322
	13	53-21-1323
	14	53-21-1324
	15	53-21-1325
	16	53-21-1331
	17	53-21-1332
	18	53-21-1333
	19	53-21-1334
	20	53-21-1335
	21	72-5-402
	22	Repealer
	23	Codification instruction
330	1	37-1-142
	2	Codification instruction
	3	Effective date
	4	Termination
331	1	13-13-241 (Voided and replaced by sec. 2, Ch. 331)
	2	Coordination instruction
332	1	77-3-305
	2	77-3-312
	3	77-3-313
	4	77-3-314
	5	77-3-316
	6	Reporting requirements
	7	Effective date
	8	Applicability
333	1	2-4-307
	2	Applicability
334	1	50-51-101
	2	50-51-102
	3	50-51-103
	4	50-51-201
	5	50-51-401
335	1	3-1-1001
	2	3-1-1010
	3	3-7-221
	4	3-7-222
	5	3-7-225
	6	3-7-223
	7	3-7-224
	8	19-5-301
	9	Appropriation
	10	Codification instruction
	11	Effective date
336	1	87-2-511
	2	Effective date
337	1	20-7-334
	2	90-3-1003
	3	Severability
	4	Effective date
338	1	Commissioner review — cancer clinical trials
	2	Cancer clinical trials — review by interim committee
	3	Consumer information — coverage of routine patient care for cancer patients participating in cancer clinical trials
	4	Termination

	5	Effective date
339	1	81-1-112
	2	81-7-106
	3	2-15-3110
	4	2-15-3114
	5	15-1-122
	6	15-24-925
	7	17-7-502
	8	81-1-110
	9	81-7-103
	10	81-7-104
	11	Codification instruction
	12	Effective date
	13	Termination
340	1	15-30-2522
	2	Effective date
341	1	80-7-106
	2	80-7-108
	3	Effective date
342	1	37-15-102
	2	37-15-103
	3	37-16-103
	4	37-16-401
	5	37-16-405
343	1	41-3-425
344	1	2-15-1028
	2	46-8-101
	3	46-8-113
	4	46-8-114
	5	47-1-102
	6	47-1-105
	7	47-1-111
	8	47-1-202
	9	47-1-205
	10	47-1-215
	11	47-1-216
	12	47-1-118
	13	Codification instruction
	14	Effective date
345	1	16-2-211
	2	Codification instruction
	3	Nonseverability
	4	Effective date
346	1	33-31-102
	2	33-31-201
	3	53-6-702 (Voided and replaced by sec. 4, Ch. 346)
	4	Coordination instruction
347	1	7-2-2801
	2	7-2-2802
	3	7-2-2803
	4	7-2-2804
	5	7-2-2805
	6	7-2-2806
	7	7-2-2807
	8	7-2-2808
	9	7-2-2809
	10	7-2-103
	11	7-2-2201
	12	7-2-2202
	13	7-2-2411
	14	7-2-2412
	15	7-4-2631
	16	7-4-2632
	17	7-4-2637
	18	15-10-420
	19	Codification instruction
348	1	39-11-103
	2	39-11-202
	3	Repealer
	4	Effective date
349	1	90-6-601
	2	90-6-602
	3	90-6-603
	4	90-6-604
	5	90-6-605
	6	17-6-201
	7	17-6-308
	8	Codification instruction
	9	Effective date
350	1	2-9-211
	2	33-2-301
	3	33-2-318
	4	33-2-319
	5	33-2-302
	6	33-2-303
	7	33-2-305
	8	33-2-307
	9	33-2-310
	10	33-2-311
	11	33-2-312
	12	33-2-313
	13	33-2-316
	14	33-2-317
	15	33-2-321
	16	33-2-322
	17	33-2-323
	18	Codification instruction
	19	Severability
	20	Effective date
	21	Applicability
351	1	53-6-710
	2	53-6-711
	3	33-1-102
	4	33-31-115
	5	53-6-116
	6	53-6-702 (Voided and replaced by sec. 4, Ch. 346)
	7	53-6-704
	8	53-6-705
	9	53-6-707
	10	53-21-701
	11	Repealer
	12	Codification instruction
	13	Effective date
	14	Retroactive applicability
352	1	26-1-1101
	2	26-1-1102
	3	26-1-1103
	4	26-1-1104
	5	26-1-1105
	6	26-1-1106
	7	26-1-1107
	8	26-1-1108
	9	Codification instruction
353	1	15-1-206 (Voided by sec. 3, Ch. 353)
	2	15-1-216 (Voided by sec. 3, Ch. 353)
	3	Coordination instruction
	4	Effective date
	5	Applicability
354	1	10-1-1501
	2	10-1-1502
	3	10-1-1503
	4	10-1-1504
	5	10-1-1505
	6	10-1-1506
	7	10-1-1511
	8	10-1-1512
	9	10-1-1513
	10	10-1-1514
	11	10-1-1515
	12	10-1-1516
	13	10-1-1517
	14	Codification instruction
355	1	35-8-912
	2	35-8-912
	3	Coordination instruction
	4	Effective dates
	5	Termination
356	1	15-7-101
	2	15-7-102
	3	15-7-103
	4	15-7-139
	5	15-7-201
	6	15-44-103
	7	Saving clause
	8	Severability
357	1	50-50-102
	2	50-51-102
	3	Effective date
358	1	22-3-115
	2	15-65-121
	3	Codification instruction
	4	Effective date
359	1	77-1-1109
	2	77-1-1110
	3	77-1-1111
	4	77-1-1112
	5	77-1-1113
	6	77-1-1114
	7	77-1-1115
	8	77-1-1116
	9	77-1-1117
	10	77-1-121
	11	77-1-134
	12	77-2-101
	13	Notification to tribal governments
	14	Codification instruction
	15	Severability
360	1	85-2-125
	2	Effective date
	3	Applicability
361	1	53-4-210
	2	Notification to tribal governments
	3	Effective date
362	1	77-1-228

	2	77-1-229
	3	77-1-220
	4	Codification instruction
	5	Effective date
	6	Retroactive applicability
364	1	Time limits
	2	Appropriations
	3	Effective date
365	1	Appropriations from natural resources projects state special revenue account
	2	Conditions of grants
	3	Appropriations established
	4	Review of previously authorized grants
	5	Notification to tribal governments
	6	Severability
	7	Effective date
366	1	Projects not completing requirements — projects reauthorized
	2	Coal severance tax bonds authorized
	3	Conditions of loans
	4	Private and discount purchase of loans
	5	Appropriations established
	6	Creation of state debt — appropriation of coal severance tax — bonding provisions
	7	Notification to tribal governments
	8	Severability
	9	Effective date
367	1	Appropriation of cultural and aesthetic grant funds — priority of disbursement
	2	Appropriation of cultural and aesthetic grant funds
	3	Contingent appropriation of additional grant money
	4	Reversion of grant money
	5	Reduction of grants on pro rata basis
	6	Effective date
368	1	Sec. 14, Ch. 3, Special L. May 2007
	2	Sec. 16, Ch. 3, Special L. May 2007
	3	Sec. 2, Ch. 435, L. 2009
	4	Fund transfer
	5	Effective date
369	1	19-3-108
	2	19-3-315
	3	19-3-513
	4	19-3-901
	5	19-3-902
	6	19-3-904
	7	19-3-906
	8	19-3-1002
	9	19-3-1008
	10	19-3-1106
	11	19-3-1205
	12	19-3-2117
	13	19-3-2141
	14	19-21-214
	15	Effective date
370	1	87-1-201
	2	87-1-301
	3	87-1-303
	4	87-1-304
	5	87-3-301
371	1	17-3-1003
	2	20-9-516
	3	77-1-102
	4	77-1-103
	5	77-4-208
	6	Sec. 32, Ch. 486, L. 2009
	7	Effective date
372	1	13-27-202
	2	13-27-204
	3	13-27-205
	4	13-27-206
	5	13-27-207
	6	13-27-312
	7	13-27-315
	8	13-27-501
	9	Effective date
373	1	15-8-111
	2	70-23-102
	3	70-23-301
	4	76-3-203
	5	70-23-103
	6	Effective date
	7	Applicability
374	1	7-15-4214
	2	7-15-4215
	3	7-15-4237
375	1	7-15-4210
376	1	7-15-4211
	2	7-15-4221
	3	7-15-4237
	4	7-15-4282
377	1	52-2-308
	2	52-2-310
	3	52-2-311
378	1	80-7-1002
	2	80-7-1003
	3	80-7-1005
	4	80-7-1006
	5	80-7-1007
	6	80-7-1008
	7	80-7-1011
	8	Appropriations from state general fund
	9	Effective date
379	1	15-1-205
	2	5-4-104
	3	Codification instruction
	4	Effective date
380	1	Select committee on efficiency in government — membership
	2	Committee duties — evaluation of priority budgeting systems — reporting
	3	Appropriation
	4	Effective dates
	5	Termination
381	1	15-1-216
	2	15-30-2604
	3	Applicability
382	1	75-20-104
	2	75-20-301
	3	75-20-303
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